30/2

# INS Reporter

Immigration and Naturalization Service U.S. Department of Justice Winter 1981-82

NEWARK PUBLIC LIBRARY

MAR 2 9 1982

U. S. GOVT. PUBS.
DEPOSITORY 376

Proposed Omnibus Immigration Control Act
The Cuban Boatlift
Marriage Frauds
Technology Helps Patrol the Borders

J 21. 10/2:

# INS Reporter

**Winter 1981-82**

**United States Department of Justice**
William French Smith, Attorney General

**Immigration and Naturalization Service**
Alan C. Nelson, Commissioner

## Contents

Volume 30, No. 2

Proposed Omnibus Immigration Control Act 1
The Cuban Boatlift 4
Marriage Fraud 8
Technology Helps Patrol the Borders 10
Changes in the Regulations 12
Administrative Decisions 12

**Immigration and Naturalization Service**

Doris M. Meissner
**Acting Deputy Commissioner**

James H. Walker
*Acting Associate Commissioner*
*Management*

Glenn A. Bertness
*Acting Associate Commissioner*
*Enforcement*

Andrew J. Carmichael, Jr.
*Associate Commissioner*
*Examinations*

Robert A. Kane
*Associate Commissioner*
*Operations Support*

James A. Kennedy
*Acting Comptroller*

Harry A. Scarr
*Acting Associate Commissioner*
*Planning & Evaluation*

Maurice C. Inman, Jr.
*General Counsel*

Verne Jervis
*Public Information Officer*

Janet R. Graham
*Editor*

**Cover:** During the period April 21-October 10, 1980, the Mariel boatlift brought more than 125,000 Cuban nationals to U.S. shores on more than 2,000 vessels. Although most of the boats making the trip from the U.S. to Cuba to pick up Cuban nationals were small craft, carrying approximately 30-50 passengers, there were a number of larger vessels which brought anywhere from one to three or four hundred Cubans at one time.

*The opinions expressed are those of the authors and do not necessarily reflect the views or policies of the Immigration and Naturalization Service.*

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of this Agency.

# Proposed Omnibus Immigration Control Act

On October 20, 1981, President Reagan's legislative proposals for immigration reform were transmitted to the President of the Senate and the Speaker of the House of Representatives by the Attorney General. The proposed legislation, entitled "Omnibus Immigration Control Act," which contains major changes in current immigration law, includes the following Titles:

| | |
|---|---|
| TITLE I: | Temporary Resident Status for Illegal Aliens |
| TITLE II: | The Unlawful Employment of Aliens Act of 1981 |
| TITLE III: | Cuban/Haitian Temporary Resident Status Act of 1981 |
| TITLE IV: | The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981 |
| TITLE V: | The Immigrant Visas for Canada and Mexico Act |
| TITLE VI: | The Temporary Mexican Workers Act |
| TITLE VII: | The Immigration Emergency Act |
| TITLE VIII: | The Unauthorized Entry and Transportation Act |
| TITLE IX: | The Labor Certification Act |
| TITLE X: | The Emergency Interdiction Act |

Following is the covering letter sent by the Attorney General to the Congress describing each of the ten Titles contained in the legislation:

. . . The history of America has been in large part the history of immigrants. Our nation has been overwhelmingly enriched by the fifty million immigrants who have come here since the first colonists. For nearly our first century and one-half as a nation, the Congress recognized our need for new arrivals by imposing no quantitative restrictions on immigration. Since 1921, however, the government and our people have recognized the need to control the numbers of immigrants and the process by which they enter our country.

In recent years our policies, intended to effect that necessary control of our borders, have failed. Last year, the number of immigrants legally and illegally entering the United States reached a total greater than any year in our history, including the era of unrestricted immigration.

This bill represents a comprehensive and integrated approach to immigration. This legislation is premised upon the fact that there are between three and six million illegal aliens in this country and their numbers are continuing to grow from one-quarter to one-half million each year. Something must be done.

The following titles of this bill are designed to curtail illegal immigration:

| | |
|---|---|
| TITLE I: | Temporary Resident Status for Illegal Aliens |
| TITLE II: | Unlawful Employment of Aliens Act of 1981 |
| TITLE VI: | The Temporary Mexican Workers Act |
| TITLE IX: | The Labor Certification Act. |

Together, these four proposals should substantially reduce illegal immigration by expanding opportunities to work lawfully in the United States and by prohibiting the employment of illegal aliens outside of these programs.

The "Temporary Resident Status for Illegal Aliens" bill would permit illegal aliens, who were present in the United States prior to January 1, 1980, and who are not otherwise excludable, to apply for the new status of "temporary resident." This status would be renewable every three years, and after a total of ten years of continuous residence, those residents would be eligible to apply for permanent resident status if there were not other reasons to exclude them and they could demonstrate English language ability.

The United States has neither the resources, the capability, nor the motivation to uproot and deport millions of illegal aliens, many of whom have become integral members of the community. By granting limited legal status to the productive and law-abiding members of these communities, this nation will acknowledge the reality of the situation.

"The Unlawful Employment of Aliens Act" would prohibit employers of four or more employees from knowingly hiring illegal aliens. Civil fines would be assessed for each illegal alien hired and injunctions would be authorized against employers who follow a pattern or practice of hiring illegal aliens.

"The Temporary Mexican Workers Act" establishes a two-year program for the admission of nationals of Mexico for employment in jobs for which there is a shortage of domestic workers. The jobs could be in any field, skilled or unskilled, provided that there is a lack of available labor. Since the program is a pilot project and is intended as a test, it would be limited in time to a two-year period, and limited in size to 50,000 workers per year.

Under the provisions of "The Labor Certification Act," the temporary Mexican workers who will come to the United States, would be excluded from jobs in states where it was certified that there was an adequate supply of American workers. The existing H-2 temporary worker program would continue to operate.

During the trial period, this experimental program would be evaluated for its impact on American workers, the feasibility of enforcing the program's restrictions, and the overall benefit to the United States.

Mass migrations of undocumented aliens to the United States are a recent phenomenon. They are also a phenomenon for which the nation is woefully ill-prepared, and the consequences of our unreadiness have been disasterous.

The 1980 Mariel boatlift brought a wave of 125,000 Cubans to the beaches of south Florida. Among those persons were criminals and the mentally ill, some of whom were forcibly expelled by Fidel Castro. Notwithstanding its obligations to do so under international law, the Cuban Government has refused to allow these individuals to return to Cuba. Most of the Cubans have been resettled through the efforts of private and public agencies.

There is also a continuing migration to Florida of undocumented aliens from Haiti and elsewhere. Although the government of Haiti is willing to accept the return of Haitians deported by the United States, exclusion proceedings have been blocked by time-consuming judicial challenges to Immigration and Naturalization Service proceedings. While the foreign policy character of the Cuban and Haitian migrations differs, the domestic impact on our local communities and on the administration of our immigration laws is the same.

We must prevent another Mariel. In addition, we must act to curtail the ongoing arrivals of undocumented aliens to these shores in violation of our laws. Finally, we must deal with the recent legacy of those Cubans and Haitians who are already here.

The following titles of this bill were developed to provide adequate legal authority to deal with future migrations of undocumented aliens:

TITLE III: Cuban/Haitian Temporary Resident Act of 1981

TITLE IV: The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981

TITLE VII: The Immigration Emergency Act

TITLE VIII: Unauthorized Entry and Transportation Act

TITLE X: The Emergency Interdiction Act

"The Cuban/Haitian Temporary Resident Act of 1981" would repeal the Cuban Refugee Adjustment Act of 1966 so that undocumented Cubans will not be eligible for adjustment of status upon completion of one year of physical presence in the United States.

This proposal would allow most of the undocumented Cuban and Haitian entrants to regularize their status by applying for a new "temporary resident" status. After five years of continuous residence in this country, such Cubans and Haitians could apply for permanent residence, providing they were self sufficient, had minimal English language ability, and they were not otherwise excludable.

"The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981" grants the United States the authority to conduct expedited proceedings with respect to undocumented aliens encountered at our borders and ports of entry, and at points outside the territorial limits of the United States. Presently, an alien who enters the United States without inspection can submit his asylum request and remain in the United States while his asylum request winds its way through the labyrinth of administrative and judicial channels. Thus, there is an incentive for him to enter the United States without inspection.

Current exclusion proceedings are prescribed by section 236 of the Immigration and Nationality Act (INA). That section provides for a hearing before an immigration judge and requires that a complete record of the testimony and evidence be kept. Section 292 of the Act provides right of counsel (at no expense to the government) for any alien in an exclusion proceeding. Under 8 C.F.R. 236.2, the immigration judge must advise the alien of his right to counsel of his choice and of the availability of free legal services. A decision by the immigration judge that the alien is excludable is appealable to the Attorney General under section 236(b). The Board of Immigration Appeals (BIA) was created by the Attorney General administratively to hear such appeals (8 C.F.R., Part 3). Under 8 C.F.R. 236.7, the alien has 13 days after a written decision of exclusion is mailed to file an appeal with the BIA. An appeal from an oral decision of exclusion must be taken immediately after the decision is rendered. On request, the BIA must schedule oral hearings on the appeal. BIA decisions must be issued in writing. Under section 106(b) of the Act, an alien under a final order of exclusion by the BIA may obtain judicial review only by habeas corpus proceedings.

"The Fair and Expeditious Appeal, Asylum and Exclusion Act" will streamline those proceedings when an alien cannot present any documentation to support a claim of admissibility. Under this proposal the initial questioning of a particular individual would be conducted by a trained Immigration and Naturalization Service asylum officer. The examination would be oral and no transcript would be made of it. In most cases involving undocumented aliens, the examining officer would make an immediate decision to exclude the alien. There would be no right to an administrative appeal. The removal or return of the alien to his home country would be accomplished as soon as possible.

"The Unauthorized Entry and Transportation Act" is based on the December 19, 1980 decision of the United States District Court for the Southern District of Florida. In the case of *United States* v. *Anaya, et al.*, No. 80-231-CR-EPS, the court dismissed the indictment of persons who were charged with unlawfully bringing undocumented Cuban aliens into the United States in violation of section 274 of INA. The court held that section 274 does not apply to instances in which persons immediately present undocumented aliens to Immigration and Naturalization Service officials. This decision has prevented any criminal prosecutions of persons involved in bringing in undocumented aliens during the Mariel boatlift.

The result of the holding is that the United States does not have an effective criminal sanction against such conduct.

The *Anaya* case is in the process of appeal. Nevertheless, there is a threat of immediate harm that might arise from the lack of an effective criminal penalty for bringing undocumented aliens to our country and taking them directly to the Immigration and Naturalization Service. Therefore, this proposal would amend the seizure and forfeiture provisions for conveyances involved in violations of section 274.

"The Immigration Emergency Act" would permit the President to declare an "immigration emergency" to enable the United States to respond to the actual or threatened mass migration of viseless aliens to the United States. This proposal would amend the Immigration and Nationality Act by adding new sections 240a through 240e (8 U.S.C. 1230a through 8 U.S.C. 1230e). This legislation would enable the federal government to respond more effectively to future mass migrations. One of the ways the legislation

seeks to do this is by prohibiting residents of the United States from aiding aliens in their efforts to enter the United States. The Mariel boatlift also demonstrated that in certain circumstances United States residents may be willing to lend their assistance even though the aliens may not be entitled to admission to the United States.

Several of the provisions in this Act are designed to give law enforcement authorities the power to prevent United States residents from transporting visaless aliens to the United States. Section 240B(a) authorizes the President to impose travel restrictions to a designated foreign country or area. Any conveyance under the care, custody or control of a United States resident would be prohibited from going within a specified distance of the designated foreign country or area unless prior permission has been obtained. Furthermore, section 240B(b)(1) authorizes the President to close harbors, airports, or roads which may be used by persons seeking to bring aliens to the United States. The purpose of this provision is to enable law enforcement authorities to prevent, for example, the departure of vessels from a harbor. It is obviously easier to restrict boats in a harbor than it is to try and intercept them once they are on the high seas. Effective enforcement may thus require that vessels be prevented from reaching open waters where they would be able to scatter and avoid detection. Persons removing vessels from the harbor without permission would be subject to arrest and criminal penalties.

There are also important reasons for not attempting to rely on existing emergency legislation. While the International Emergency Economic Powers Act, (IEEPA), 50 U.S.C. 1701 *et seq.*, gives the President broad powers and could conceivably be invoked in a situation where there is an actual or threatened mass migration of visaless aliens to the United States, to exclusively rely on IEEPA would be unsatisfactory.

Under IEEPA, an emergency can be declared only when there is "any unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States." It is conceivable that some situations which would merit the declaration of an immigration emergency, would also meet the criteria of IEEPA. However, there are other situations which would justify the declaration of an immigration emergency but which would not clearly be a threat to the national security, foreign policy or economy of the United States, and thus the provisions of IEEPA could not be invoked.

While IEEPA would authorize some of the actions which could be pursued under this immigration emergency legislation, such as the travel restrictions, it probably would not authorize such procedures as those designed to expedite exclusion and asylum claims, the detention of aliens pending deportation proceedings, and the interdiction of aliens coming to the United States. IEEPA was primarily designed to regulate international economic transactions and not to control noneconomic aspects of international intercourse.

IEEPA gives the President greater powers than would be needed to take care of an immigration emergency. IEEPA was drafted broadly so as to encompass a wide range of situations which would threaten the national security, foreign policy or economy of the United States. An immigration emergency, on the other hand, is a limited type of emergency for which specific powers can be delineated to respond to the situation. The public and the judiciary would more readily understand and uphold actions taken in the course of an immigration emergency if there is a specific statute authorizing such actions, rather than if supports for those actions must be sought from the statutory provisions of legislation such as IEEPA, which is not tailored to the precise problems that would arise during an immigration emergency.

The "Emergency Interdiction Act" states that the President can enter into agreements with foreign countries for the purpose of preventing illegal migration to the United States. Under such an agreement, the Coast Guard could stop a foreign flag vessel on the high seas if there is reason to believe that the vessel is destined for the United States and carrying undocumented aliens who are not entitled to enter the United States.

The basic legal framework governing immigrant admissions to the United States was established by the 1965 amendments to the Immigration and Nationality Act. These amendments retained the policy of numerically restricting certain preference categories of immigration. For the first time in our history, immigration from Western Hemisphere countries was limited, to 120,000 annually. Annual per country ceilings of 20,000 were extended to the Western Hemisphere in 1976.

With regard to refugee admissions, the Congress first dealt comprehensively with the question only recently. In the Refugee Act of 1980, Congress prescribed a uniform definition of "refugee" without geographic or ideological limitation, and established a process for the annual determination of refugee admissions by the President, after consultations with Congress.

Imposition of country ceilings of 20,000 annually, in conjunction with the new preference system and labor certification requirements added by the 1965 amendments, resulted in a drastic reduction in immigration from Canada and Mexico. The ceiling on immigration from the United States' closest neighbors should be increased. "The Immigrant Visas for Canada and Mexico Act" would create separate annual ceilings for numerically restricted immigration from Mexico and Canada raising the totals from the present 20,000 to 40,000 for each country. The unused portion of either country's allotment would be available to citizens of the other nation. The numerically restricted immigration from other countries of the world would be adjusted so as not to be affected by this change.

Under "The Immigrant Visas for Canada and Mexico Act," any unused visas in Mexico or Canada in a fiscal year would be allotted to the other country during the next fiscal year. The overall limitation on immigration from the rest of the world would be reduced from 270,000 to 230,000. Historically, the demand for immigrant visas by nationals of Mexico has exceeded the demand by nationals of Canada. For ex-

ample, in fiscal year 1978 there were 17,000 immigrants from Canada as opposed to 92,000 from Mexico. These figures include both numerically and non-numerically limited immigrants. Based on this, we would assume that Mexico would use all of their 40,000 visas in the first year and Canada would use no more than 15,000 to 20,000 visas. In subsequent years the unused visas for Canada would be allocated to Mexico and would probably result in 60,000 to 65,000 visas being available each year to Mexico. Essentially there would be no increase in immigration from Canada and there would be a substantial increase in immigration from Mexico.

"The Omnibus Immigration Control Act" will allow the United States to continue as a nation that is open to immigration and that does its share to assist and resettle the refugee. This bill is necessary if this nation is to continue to provide for our people, while welcoming others who desire to contribute to this nation's continuing experiment in liberty. ■

---

Editor's Note: Following submission of these proposals to Congress, extensive hearings were held by the Senate Subcommittee on Immigration and Refugee Policy, under the Chairmanship of Senator Alan Simpson, and the House Subcommittee on Immigration, Refugees and International Law, under the Chairmanship of Congressman Romano Mazzoli. Hearings on the various elements of the proposed legislation will resume when Congress reconvenes January 25, 1982. It is anticipated that a final version of the legislation will reach the floor of the Congress sometime during the Spring.

# The Cuban Boatlift

By Edward K. Burns
*Immigration Inspector*
*Inspections Division*
*Central Office*

It began on April 21, 1980 at 6:30 p.m. The small ship "Elmer" put into port at Key West, Florida, at dusk with 30 Cuban aliens aboard. Two hours later "Dos Hermanos" brought in two dozen more and just before dawn, "Big Baby" sailed in carrying over 200 Cuban passengers. The Cuban Boatlift had begun.

It was unexpected, and unprecedented. Never had there been such a massive wave of intending immigrants boldly arriving on our shores unannounced, unscreened and, uninvited. In the succeeding five months, flotillas of pleasure boats, shrimp boats and small craft of all kinds streamed back and forth across the 90 miles of the Florida Straits bringing, by September 26, 1980, an astounding 125,000 Cubans to United States shores on 2,020 boats.

What stimulated this sudden surge of people to our country? A look back at the events preceding the 1980 Cuban Boatlift will provide the answer.

**Background**

Many Cubans since 1979 had sought asylum at the Peruvian and Venezuelan Embassies in Havana. In early April 1980, Cuban guards posted outside the Peruvian Embassy were withdrawn as a result of the death of a guard shot during an attempt by Cubans to crash into the Embassy compound.

Thereafter, the Cuban Government announced that any who wished to seek Peruvian visas would be free to leave Cuba. Within days, more than 10,000 people swarmed into the Peruvian Embassy compound. In cooperation with an international effort to resettle these people, the U.S. Government on April 14 agreed to admit up to 3,500 Cuban refugees from the Peruvian Embassy.

An airlift from Havana to Costa Rica began on April 14. Some 1,000 refugees had been airlifted before operations were suspended on April 18, when the Cuban Government stated that only flights to countries of final destination would be allowed. Finally, on April 20, the Castro regime announced that all Cubans wishing to go to the U.S. were free to board boats at the port of Mariel, 20 miles from Havana. Within 24-hours of that announcement, numerous small boats left the U.S. for Cuba to pick-up relatives and others at Mariel.

**INS Response**

Needless to say, INS was faced with an extreme challenge to come up with an appropriate response to this unprogrammed emergency. What legal action should be taken? Turn them back? Defer inspection? Detain them? Are they admissible to the U.S.? What does the immigration law say?

With many boats reported on the water streaming toward the United States, it was necessary that INS first respond to the immediate problem, that of receiving the aliens and completing the preliminary processing as quickly as possible. Not knowing how many people would be coming, it was important that INS respond with a streamlined, efficient, and humane operation, which fully protected the rights of the aliens while at the same time meeting the statutory requirements of the immigration laws.

When the initial group of Cubans arrived on April 21, there was one Immigration Inspector on duty at Key West, Florida. INS immediately detailed additional officers to that location to assist. From the outset, it was evident that these individuals would have to be processed as quickly as possible and moved on to Miami for more in depth screening, in order to avoid a "logjam" at Key West.

Within a short time, 100 Border Patrol Officers and another 50 Immigration Inspectors and Detention Officers were detailed to assist in enforcement and inspection duties in the South Florida area. Aircraft, vehicles and communications equipment needed to support the operation were moved into the area. And, the Regional Commissioner of the

Southern Region was immediately dispatched to Miami to assume direct command of the program.

Most of the first wave of arrivals had close family ties in the Miami area. Thus, it was decided that where an entrant had a relative or a willing sponsor, he or she could be processed by INS and paroled to that relative or sponsor for a period of 60 days, with authorization to seek employment.

As the boatlift continued, it became evident that additional processing sites would be needed since there were many aliens arriving from Cuba who had no relatives in the U.S. There were more single males, more who needed medical attention, and an inordinate number of homosexuals. It was apparent that Cuban authorities were deliberately splitting family units and forcing boat captains to accept large numbers of nonrelatives for every family unit taken on board.

This large vessel arriving at dockside in Key West, Florida, carried several hundred passengers. Upon arrival, the Cubans underwent preliminary processing by INS before onward transportation to the permanent processing center at Eglin Air Force Base in Fort Walton Beach, Florida.

**Criminal Background**

The Service, and the many other government agencies involved in this program, was dismayed to find that many of the Cubans had been recently released from a variety of institutions—many had criminal records.

When initial screening indicated a criminal background, the subjects were referred to a secondary processing officer who would, based on a more in depth screening, determine whether the alien should be detained. That officer's judgment was confirmed or overruled by a review panel.

At one point, the number initially identified as having a criminal record amounted to approximately 24,000 persons. However, after careful screening by INS officers, many were found to have committed petty offenses, such as stealing rationed food, tobacco or clothing to wear, or had been jailed for alleged political crimes. These were not detained. It should be pointed out that of primary consideration in determining whether an individual should be released was whether such release would be harmful to the public. Again, each decision to detain or release was reviewed by a panel of at least three supervisory officers.

Of the 24,000, some 1,600 Cubans were detained in Federal Correctional Institutions on the basis of having admitted or been convicted of committing serious crimes. Some of the criminal acts committed by the detainees included robbery, rape, homicide, arson, assault, burglary, and prostitution. And, included in the group were chronic criminal offenders.

**Additional Processing Facilities**

Each day, the number of entrants grew by quantum leaps. For example, in early May 1980, 5,600 persons arrived in a single day on 132 boats. Also, minor scuffles and other disorders broke out among the large group of people, requiring the Governor of Florida to activate the National Guard to maintain order at the site. Thus, one of the first problems the Service had to address was the need for additional processing centers as the facilities within the Miami area became overtaxed.

The search for an appropriate site was coordinated with the Federal Emergency Management Agency (FEMA), which had responsibility for locating appropriate facilities. It was decided that Eglin Air Force Base in Fort Walton Beach, Florida, would be the first site established for processing Cuban entrants. It opened on May 3, 1980. Within the next four weeks, centers also were opened at Fort Chaffee, Arkansas; Fort Indiantown Gap in Pennsylvania; and Fort McCoy in Wisconsin.

In staffing Eglin, the Service sought officers who had prior experience in the Indochinese Refugee Program of 1975, and who spoke Spanish. One such officer was Wayne Joy, Regional Planning and Evaluation Officer, Dallas, Texas, who was designated Officer in Charge at Eglin. He was able to provide a staffing plan for a processing center which was based on a camp population capacity of 10,000 aliens, with Service employees working two 12-hour shifts, targeting for an output of 1,000 applicants processed daily. His plan, in fact, was used as the prototype for the other three camps, which eventually were to receive almost 63,000 Cuban aliens for processing and sponsorship.

**Boat Fines**

Aside from opening new processing centers and staffing them, we were also faced with the problem of dealing with the owners and boat captains who were transporting these Cubans to the United States in violation of law.

Section 273 of the Immigration and Nationality Act makes it unlawful for a person to bring any alien to the U.S. who does not have an unexpired visa. The penalty for doing so is a fine of $1,000 for each alien so brought, paid to the Collector of Customs. Therefore, Notices of Intention to Fine under this section were served on 1,954 boat owners. As of mid-November 1981, $287,000 in fines had been collected and 531 cases had been referred to the U.S. Attorney for collection.

In addition, Section 274 of the Act makes it unlawful for a person to bring into or land in the U.S. any alien not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the U.S. under the terms of this Act. The penalty under this section is a fine not exceeding $2,000 or imprisonment for five years, or both, for each alien. This section of law also provides for the seizure and forfeiture of any vessel used in violation of this section. To date, the U.S. Attorney has authorized the prosecution of 872 cases of which 262 persons are under indictment.

It was found that many of the vessels were ill-equipped, lacking radio equipment, sufficient life vests, etc., some were transporting excessively large numbers of people far beyond the capacity of the boat, thus endangering the lives and safety of their passengers. Some captains were charging U.S. residents sums of money to bring their relatives here.

Although boat owners and captains generally were conceded to be acting on humanitarian principles, nevertheless, immigration laws were being violated, and lives endangered by improperly equipped or overloaded vessels. The Service had no desire to punish those seeking to come to the U.S., but simply wished to deter the continued departure of vessels to Cuba for the purpose of transporting aliens to this country unlawfully.

**Refugees or What?**

One of the most frequently asked questions concerned the status of these Cubans under U.S. immigration law. Are they refugees or what?

Under the Refugee Act of 1980, the decision to invite large numbers of refugees to the U.S. must be made through consultation between the Executive Branch and the Congress. Subject to the numerical limitations agreed to in that consultation, the Attorney General may admit refugees pursuant to such regulations as he may prescribe. Under those regulations, aliens who meet the definition of refugee set forth in Section 101(a)(42) of the Immigration and Nationality Act, are identified abroad and cleared for admission to the United States. Therefore, aliens who come to the U.S. outside the refugee admission procedures established by regulation are not considered refugees.

It was determined that those Cubans with relatives or sponsors in the United States would be paroled into the country for a 60-day period under the Attorney General's parole authority contained in Section 212(d)(5) of the Act. Others would be sent to processing camps until sponsors could be located.

**Asylum**

The Refugee Act of 1980 also provides that any alien in the United States or who arrives at a port of entry, may apply for asylum if he/she can demonstrate a well-founded fear of persecution should they return to their country of origin. Virtually all of the Cuban arrivals asked for asylum.

In addition to the Cubans, Haitian nationals have been flocking to our shores since 1979, also seeking asylum. Haitians seeking asylum number somewhere between 15 and 20 thousand. However, the Refugee Act never contemplated a sudden massive influx of persons seeking asylum. The procedures dealing with asylum require lengthy examinations on a case-by-case basis and a good number, in any event, would not qualify for admission under that category. Therefore, it was determined that a different course of action would be necessary to regularize their status.

**Cuban-Haitian Entrants Status**

To meet this extraordinary situation, President Carter proposed legislation which would regularize the status of Cuban-Haitian entrants. Meanwhile, all

A group of Cubans arrive by air from Miami enroute to the INS processing facilities at Eglin Air Force Base. They were greeted by Volag representatives who acted as interpreters and aided in the processing procedures.

The Cubans were then bussed to the INS facility where they underwent the appropriate INS and Public Health screening procedures before being released to relatives or other sponsors.

Cubans who arrived in the U.S. during the period April 21-June 19, 1980 and were in INS proceedings, and all Haitians who were in INS proceedings as of June 19, 1980, were granted the classification, "Cuban-Haitians Entrants (status pending)." The cut-off date for Cuban-Haitian Entrants status was later extended to October 10, 1980. Their parole into the country was authorized until January 15, 1981, to provide Congress time to act on the legislation. Permission to seek employment was also authorized.

Legislation was introduced in the 96th Congress in June 1980; however, no action was taken on the proposal before adjournment in December. Therefore, it was necessary to extend the parole for Cuban-Haitian entrants to July 15, 1981, so that legislation in their behalf might be considered by the new Congress. Such legislation is included in the Omnibus Immigration Control Act proposed by President Reagan and forwarded to the 97th Congress on October 20, 1981. This legislation also extends the cut-off date for Cuban-Haitian Entrants status to January 1, 1981.

**Authority to Detain**

Due to lack of sponsorship in some cases or a criminal background or other serious violations of law in other cases, the Service found it necessary to detain certain groups either in processing camps, INS facilities, or Federal Correctional Institutions. Under Section 235(b) of the Immigration and Nationality Act, the Attorney General has authority to detain any arriving alien not "clearly and beyond a doubt entitled to land" pending a determination of admissibility to the United States. This authority has been upheld by the courts.

As mentioned earlier, those aliens who had relatives or other sponsors were released from INS custody following completion of the inspection process. Those without sponsors, approximately 400, continue to be held in the Fort Chaffee, Arkansas, processing camp until appropriate sponsorship can be found. Long-time policy of the Service in asylum claims requires that there be a qualified sponsor to whom the alien can be released. This is to insure their care and maintenance while the asylum claim is being considered. Also, it provides the Attorney General with certain control over the whereabouts of the individual until his/her legal status has been clarified.

**Unaccompanied Minors**

Another surprising development was the discovery of a large number of unaccompanied minors among the Cubans arriving each day. These children were under 18 years of age, with some as young as 13 and 14 years old; some with relatives in the U.S., others without.

It was of primary concern by all agencies involved in this program to move as quickly as possible to identify all unaccompanied minors held in the various camps, and to arrange for their release either to relatives or to state agencies engaged in caring for homeless children. The humanitarian concerns for the welfare of these children required that they be removed from the environs of the camps to an atmosphere of permanency and well-being.

Thus, INS proceeded to identify and process all unaccompanied minors, expeditiously. The Office of Refugee Resettlement of the Department of Health and Human Services, in turn, proceeded to expedite family reunification of the minors, as well as arrange for appropriate placement of those without relatives. The U.S. Catholic Conference and its affiliated local agencies assisted in this effort. As a result, some 400 unaccompanied minors were successfully reunited with relatives or placed in state-run facilities.

**Mental Patients**

Lastly, we were further dismayed to find that also included among the arriving Cubans were some who were suffering from mental disorders. All entrants were required to undergo medical screening by the U.S. Public Health Service. As a result, 68 individuals were identified as mentally unstable, requiring hospitalization.

The majority of these, 50, are continuing medical observation at St. Elizabeth's Hospital in Washington, D.C., under the direction of the U.S. Public Health Service. The remaining 18 either were found medically releasable or are being observed at other appropriate medical facilities.

**Conclusion**

The problems arising during the first months of the boatlift were as numerous and as varied as the Cubans them-

selves. It required the teamwork of many Federal agencies to respond to these problems and to resolve them as quickly as possible. Considering the large number of Cubans arriving in a short span of time, it can be said that all Federal agencies involved responded with exceptional dedication, cooperation and efficiency in meeting the existing emergency. ■

## Marriage Fraud

By David Dec
*Criminal Investigator*
*Eastern Regional Office*
*Burlington, Vermont*

> WANTED: U.S. citizen willing to marry an illegal alien and sign immigration papers for him. Cohabitation after marriage is not required. You may, however, be asked to swear to an immigration officer that you and the alien are living together as man and wife. Cost of your services is negotiable.

Since the enactment of the Immigration and Nationality Act, the temptation to enter into a fraudulent marriage has become irresistible to many aliens. Not only does marriage to a United States citizen exempt an alien from having to obtain a labor certification, but it also enables the individual to obtain permanent resident status without being subject to any numerical limitations and the resultant delays. A sham marriage to a legal permanent resident alien is only slightly less attractive because of the preference given to beneficiaries of petitions filed by these spouses.

The majority of illegal aliens in this country are either employed or seeking employment. Because an increasing number of employers are requiring employees to show documentary proof of United States citizenship or permanent resident status, the illegal alien must either purchase counterfeit documents or become a permanent resident. Since most illegal aliens cannot qualify for an immigrant visa or for adjustment of status, and many find the complexities of a labor certification fraud intimidating, a sham marriage scheme is particularly appealing. If successful, the alien will be accorded legal status and will be issued the coveted alien registration receipt card. This entitles him to employment without harassment, and to nearly all the benefits accorded United States citizens.

### Profile of a Marriage Fraud

For an alien to qualify for permanent resident status through marriage, the individual petitioning for the alien must establish, to the satisfaction of the immigration or consular officer, that he or she is a United States citizen or permanent resident alien, that he or she was free to marry, and that he or she is legally married to the beneficiary. The beneficiary must similarly demonstrate freedom to marry, and proof of a legal marriage to the petitioner. The immigration examiner or consular officer, after reviewing the documents and, in some cases, after interviewing the parties, makes a determination as to whether the relationship is bona fide or not.

There have been attempts to profile fraudulent marriages but it is impossible to do so with any degree of exactitude. Frauds have been found among all ages and nationality groups, religious denominations, and socio-economic strata. There are, however, certain elements that indicate the possible existence of fraud in a relationship. These include, but are not limited to, disparity in the ages of the spouses; divergent ethnic backgrounds; lack of common language; use of witnesses known to be involved in performing such marriages; use of witnesses known to have been involved in other fraudulent marriages; repeated use of one address by a number of seemingly unrelated couples; representation by an attorney suspected of irregular practices; and repeated use of certain suspect notaries public.

Although most marriage frauds take place in the United States, participants may also be sent abroad by the arrangers for the sole purpose of marrying an alien to qualify that person for an immigrant visa. Individuals of modest means or individuals receiving public assistance, who may have never travelled overseas before, and who without explanation marry someone they have just met, may be part of such conspiracies.

Marriage frauds can occur in isolation or as part of well-organized third-party controlled operations. An isolated marriage fraud case may be defined as simply a case where an alien and a United States citizen or permanent resident alien are willing to marry for the sole purpose of helping the illegal alien obtain an immigration benefit. No other individuals are involved in the scheme. The couple enters into the marriage with the mutual understanding that there will be no cohabitation, and that the marriage will be dissolved after the alien legalizes his or her status. Almost all cases involve direct monetary gain for the citizen or legal permanent resident alien who has entered into the arrangement. When the divorce occurs, the alien generally pays for it.

### Third Party Arrangers

Sham marriages are commonly orchestrated by third party arrangers who carefully coach the participants in the various roles they will need to play if the alien is to be successful in securing legal status. In some schemes, the third party arrangers employ the services of "runners," who help to provide alien clients and locate prospective spouses. The arranger is the mastermind of the scheme, bears major responsibility for its success or failure, and generally takes a sizeable cut of the monies paid by the alien client.

### Modus Operandi of a Marriage Fraud Scheme

Information about marriage fraud possibilities and visa scams constantly percolates through communities of illegal aliens. When an individual alien

makes initial contact with an arranger or one of the parties in his employ, the arranger may have his runner locate a prospective United States citizen spouse, or may locate a prospective spouse himself. The parties to the marriage or, more specifically, the individuals who are paid by the arranger to impersonate them, are directed to take any blood tests required by the state. Sometimes the parties are steered to a doctor or laboratory technician who has knowledge of the scam and is part of the kickback scheme.

Arrangements are then made to obtain the requisite marriage license. Since many United States citizens who enter these schemes are unreliable individuals, they are usually accompanied by the arranger or runner. This person needs to be present because the alien and his spouse-to-be may be meeting each other for the first time and may not recognize each other.

After the waiting period required by the state, the marriage is performed. In many instances, specific clergymen, who are part of the scheme or aware of it, are used. The arranger or runner may be one of the required witnesses; however, in acting as a witness, he or she will frequently use an alias to avoid detection. Almost immediately after receipt of the marriage certificate, the necessary immigration forms are executed and filed. Occasionally the documents are mailed to avoid detection.

Although the arranger's fee is $800 to $5,000, the recruited spouse will generally only receive $100 to $1,500. The runner receives $100 to $500. The alien spouse pays all costs. To assure the continuing cooperation of the recruited spouse, portions of the contracted payments may be withheld by the arranger until such time as the alien successfully attains permanent residence and/or until the divorce is successfully obtained. The business partnership among the marriage participants may last several years.

**Stand-in Brides and Grooms, and Imposters**

At some point in the scheme, the citizen or legal permanent resident alien spouse may try to extort additional funds from the illegal alien in return for his or her continued cooperation in the scheme, or to prevent the disclosure of the scam to the INS. Frequently, the original participant disappears, or backs out of the arranged marriage. Then the alien or his arranger may procure a stand-in, who forges the original participant's name to any additional documentation needed, and poses as the alien's spouse in any required immigration or consular interview. Use of a stand-in in these circumstances generally costs the alien additional monies, and further exposes him to detection as more and more individuals become party to the fraud.

Another popular variation on the stand-in scheme practiced by arrangers is to use imposters to marry illegal aliens. In this case, the imposter is an individual who enters into a marriage using the identity of another person. The acquisition of another person's identity can be a relatively simple process. In most cases, a birth certificate will satisfy the documentary requirements for establishing United States citizenship. As copies of birth certificates can be obtained at a cost of fifty cents to six dollars, the supply available to any arranger is inexhaustible. The person whose identity is used is seldom aware that his or her birth record was used as part of a sham marriage scheme.

A convicted arranger on one occasion requested the county clerk's office to provide a copy of a birth certificate he planned to use in a marriage fraud scheme. The arranger enclosed five dollars with his request. The cost of a copy of a birth certificate was fifty cents and, rather than return the change, the county clerk's office sent out ten copies of the document. The same birth certificate, therefore, was used in ten different marriages. Another arranger disclosed that she used her high school yearbook as a source of information to obtain birth records. And a notary public was able to gather data about United States citizen females by filling out income tax forms.

Some professional stand-ins have participated in as many as one hundred marriages. In Chicago, a list was compiled of those whose identities had been used in more than two immigration marriages. Over 500 names are currently on this multiple marriage list. The identity of one individual on the list was used to marry seventeen different illegal aliens, all of whom subsequently filed for an immigration benefit as the spouse of the same United States citizen.

**Financial Gain**

Arranging fraudulent marriages for immigration purposes is a lucrative business. Some rings have become very sophisticated, and many are linked to organized crime. A marriage fraud arranger is usually an individual with a variety of unscrupulous business interests. Arrangers have been known to have an annual income from the sham marriage business alone of over $100,000. A secretary employed by a convicted marriage fraud arranger testified that, on the average, she processed each week the immigration paperwork of twelve illegal aliens who had fraudulently married United States citizens.

**Prosecution**

Marriage fraud investigations are frequently complicated, time-consuming, and sensitive. The investigator must first determine if the relationship is bona fide and, if not, then determine if there was fraudulent intent and criminality on the part of one or both parties to the marriage. An evaluation must also be made as to whether there was third party involvement in the marriage. When fraud is established, every effort must be made to properly identify all participants, and to determine what role each played and the criminal liability of each.

The INS has successfully prosecuted notaries public, attorneys, ministers of religion, and others involved in these fraudulent activities, and continues to do so. Yet there is growing concern that marriage frauds are common in the alien community and have become an accepted method of entering, remaining, and working in the United States. ■

# Technology Helps Patrol the Borders

The infrared vision scope is used by the Border Patrol to detect persons in absolute darkness, without need of a light source.

As the number of aliens seeking to enter the United States illegally continues to mount, the need for better surveillance of our international borders has become critically important. It is essential that every effective means possible be used to help those who bear the responsibility of monitoring the 2,900 miles of border with Mexico and the 4,000 mile Canadian boundary.

Working with limited personnel and within budgetary constraints, the INS Border Patrol is trying to place a greater reliance upon new and sophisticated technology in order to stem the flow of illegal human traffic into this country. To supplement the efforts of its 2,500 member force, electronic sensing devices, which warn of illicit entries, are being utilized, and closed circuit television cameras are replacing agents at certain known crossing spots.

With thousands of men, women, and children attempting to take advantage of the darkness of night to sneak across the border, the resources of the Border Patrol are under constant strain. To help ease the situation, a variety of electronic "eyes" are being used to spot intruders. Among them is the Forward Looking Infrared Systrm (FLIR) which is used on low flying aircraft to detect infrared rays given off by all objects, including people. The system transmits them to a recognizable image on a television screen located on the plane itself, and is capable of detecting persons in absolute darkness without the need of a light source.

Another electronic "eye" is the Infrared Scope. The ones presently in use are mounted on a tripod and placed on a high point of ground overlooking an area frequented by illegal border crossers. In the near future, the Infrared Scope will be mounted on a turret in the back of a pick-up truck, which will afford greater mobility.

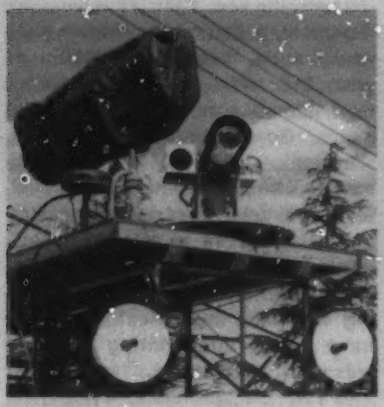
In El Paso, Texas, tests have begun on a low-light level television system which will be used to supplement line-watch activities. It consists of nine cameras which are set up to monitor a specific area. This type of electronic "eye" releases agents for other duties. Closed circuit television is already in use in the Swanton, Vermont, Border Patrol Sector. In addition, electronic sensors, which sound an alarm as vehicles or persons approach, have been implanted in the ground and along roadways, and have become a major key in the detection of unlawful entrants.

In order to cover the vast border area, the Border Patrol, by necessity, must have a high degree of mobility. For this reason, 27 fixed-wing aircraft are currently used for border surveillance and for locating illegal aliens working on farms and ranches.

Nine helicopters are also part of the Border Patrol air arm and give officers a night flying capability. Mounted with speakers and high searchlights, the imposing craft have proven valuable in spotting people attempting entry and in discouraging such attempts. Because of their mobility, they are also useful in deterring the violence that has become so commonplace in the dark gullies and canyons of the border. Further, they have the capacity to respond rapidly when sensor alarms triggered by border violators go off.

Motorcycles and all-terrain three wheel cycles have been placed at the disposal of agents and are extremely helpful in the speedy tracking and capture of illegal border crossers. These vehicles are relatively inexpensive to operate and can get up to 50 miles to the gallon.

Along with the new technology, the Border Patrol has resumed use of an old method to increase its effective-



Low-light television systems also are used to detect persons entering the U.S. illegally. The cameras are placed at strategic points along the border where persons are likely to attempt entry.

An officer located at Border Patrol headquarters monitors via television screen the activities transmitted by the low-light level cameras. Working at a console, the officer is able to control the direction of the cameras and focus on any unusual movement while scanning the terrain.

ness. For the first time since 1955, mounted agents are patrolling the border. Eighteen horses are now in use, including sixteen in the Chula Vista sector. The horses are able to take agents into wilderness areas where motorized vehicles are not permitted or where the terrain makes the use of trail bikes impractical.

Because of their keen hearing and sensitivity, the animals are also helpful in detecting persons hidden in the brush. Interestingly, the presence of a single agent mounted on horseback gives that individual a psychological advantage when confronting a group of illegal aliens. It is worth mentioning that feed for horses is still cheaper than gas—in fact the cost of using horses to apprehend aliens is about one third that required by vehicles.

Engineers are experimenting with a computer simulation model called LINESIM. The system can be fed different information such as the estimated number of aliens in a given area; their projected movement; the number of Border Patrol agents on duty at a specific time and their tactics; the location of sensors; the deployment of air and ground vehicles; communication links; terrain features; and weather conditions. Once all of this data are fed into the computer, INS management, it is anticipated, will be able to evaluate the effect on operations of procedural changes such as the need to relocate sensors or manpower, or the need to use aircraft and ground vehicles before committing funds, personnel and equipment.

INS researchers have also completed feasibility studies on a detector that recognizes the mechanical wave generated by a heart beat to discover people hidden in vehicles. The same technique may also potentially be used to locate persons concealed in railroad cars, aircraft, ships, and even buildings. Work is underway on a prototype system but further study is required before it can be put to use.

Less complicated devices and new operating strategies are also playing an important role in efforts by the Service to control the flow of illegal border crossers. New fencing has been installed in the Chula Vista area, along parts of the Arizona-Mexico border, and near El Paso, Texas. These are areas where the number of illegal entries is the highest. Although the fencing must be constantly repaired, it does discourage many would-be crossers and funnels illicit traffic to locations where Border Patrol agents have a greater chance of apprehending intruders.

Border Patrol Sector Chiefs are constantly trying new tactics to keep both smugglers and illegal aliens off balance. One tactic which has been used successfully in recent months, is to withdraw agents from the San Clemente, California, checkpoint on Interstate 5, thereby allowing vehicles to proceed without the customary check. After allowing a reasonable time for word to spread that officers were not checking the station, it suddenly was reopened. On one Sunday, officers arrested 362 persons in a four hour period and seized 41 vehicles using this tactic.

At a Texas border point last month, Border Patrol agents were temporarily removed from other duties and were assigned en masse to border crossing areas. During the brief period, while they were totally concentrated on apprehending illegal entrants, nearly 1,400 arrests were made. This is several times the usual number for a similar time span.

Because experienced smugglers and some border crossers are able to monitor radio messages sent by one border patrol station to another, El Centro, California is experimenting with a method of transmitting messages numerically. Digital Communications Systems uses

All-terrain three wheel cycles are being used by Border Patrol Agents in tracking illegal border crossers. These vehicles are relatively inexpensive to operate and can get up to 50 miles to the gallon.

numerical data to relay information which will make it impossible for outsiders to intercept.

The utilization of new methods and "unpredictable" tactics, along with the routine manner of manning the border, has resulted in the arrest of an average of a million illegal aliens in each of the past three years. Nevertheless, people continue to cross the border illegally, drawn by the ease with which they can find work at wages several times above what they can earn in their own countries—assuming work can be found.

The President's legislative proposal submitted to Congress on October 20, 1981, under the "Omnibus Immigration Control Act," contains a number of steps to combat this ever mounting flow of undocumented aliens, including employer sanctions. In support of these proposals the administration also has recommended an increase in Border Patrol resources to provide more effective interior and border enforcement. In the meantime, new techniques and new technology is being tested and, when feasible, implemented to aid in carrying out our responsibilities. ■

## Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:
46 FR 51369, Oct. 20, 1981, Secs. 100; 238.3 & 238.4.
46 FR 54498, Nov. 3, 1981, Sec. 103.1(q).
46 FR 55920, Nov. 13, 1981, Sec. 109.1.
46 FR 56775, Nov. 19, 1981, Sec. 103.1(e).
46 FR 57025, Nov. 20, 1981, Sec. 103.1(q).
46 FR 62647, Dec. 28, 1981, Sec. 238.4.
47 FR 131, Jan. 5, 1982, Sec. 238.3.
47 FR 132, Jan. 5, 1982, Sec. 316a.2.
47 FR 940, Jan. 8, 1982, Secs. 101.3; 101.4; 264.2.
47 FR 942, Jan. 8, 1982, Sec. 204.2(h).

## ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50. per year, $12. extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.**)

**Number 2876-Matter of Lee. In Visa Petition Proceedings, A-CHI-N-20149. Decided by Reg. Commr., May 8, 1981.**

(1) To qualify for nonimmigrant classification as a temporary worker of distinguished merit and ability within the meaning of section 101(a)(15)(H)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i), a beneficiary must be a member of a profession offered a temporary position performing services which require professional skills.

(2) A beneficiary who is a dentist, offered a position practicing dentistry for an indefinite period of time with no specified termination date has not been offered a temporary position and does not qualify for nonimmigrant classification as a temporary worker of distinguished merit and ability within the meaning of section 101(a)(15)(H)(i) of the Act, 8 U.S.C. 1101(a)(15)(H)(i).

**Number 2877-Matter of Aiyer. In Adjustment of Status Proceedings, A22 210 207. Decided by Reg. Commr., June 17, 1981.**

(1) Since the dependent of a principal alien derives benefits from the principal alien, an applicant for adjustment of status under section 13 of the Act of September 11, 1957 (71 Stat. 642), 8 U.S.C. 1255(b), is ineligible for section 13 benefits if he/she is the dependent of a principal alien ineligible for such benefits.

(2) Where an applicant for adjustment of status under section 13 of the Act of

September 11, 1957, was admitted under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(G)(i), as the immediate family of a principal alien admitted under section 101(a)(15)(G)(i) of the Act, 8 U.S.C. 1101(a)(15)(G)(i), and the principal alien is ineligible for section 13 benefits because he/she did not fail to maintain his/her section 101(a)(15)(G)(i) status while remaining in the United States, the applicant is ineligible for section 13 benefits.

**Number 2878-Matter of Lok. In Deportation Proceedings, A31 327 663. Decided by BIA, July 31, 1981.**

(1) The lawful permanent resident status of an alien terminates within the meaning of section 101(a)(20) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(20), with the entry of a final administrative order of deportation, *i.e.*, when the Board renders its decision in the case upon appeal or certification or, where no appeal to the Board is taken, when appeal is waived or the time allotted for appeal has expired.

(2) Once a final administrative order of deportation has been entered, barring a reversal on the merits of the deportability finding by an appellate court or administratively upon a motion for reopening or reconsideration, an alien may not thereafter establish eligibility as a lawful permanent resident for relief under section 212(c) of the Act, 8 U.S.C. 1182(c), nor may his domicile in this country from then on be considered lawful for purposes of that section.

(3) In order for an alien to establish a domicile in the United States, he must be physically present in this country and have the intention of residing here permanently or indefinitely; for that domicile to be considered lawful within the meaning of section 212(c) of the Act, the alien's presence in the United States must be lawful within the meaning of this country's immigration laws.

(4) The Immigration and Nationality Act sanctions the continuing presence in this country of but one class of aliens other than those lawfully admitted for permanent residence, namely, non-immigrants in compliance with the terms and conditions of their admission.

(5) Government action or policy to refrain from instituting deportation proceedings against an alien or enforcing his deportation notwithstanding, an alien in breach of the terms and conditions of his nonimmigrant status remains in the United States at the sufferance of the Government, not under any lawful status accorded him by the Act.

(6) A nonimmigrant crewman who complied with the conditions of his admission and did not intend to remain in this country beyond the fixed period of his temporary stay may not establish that he was "domiciled" here during the time his stay as a nonimmigrant was authorized under our immigration laws; conversely, if the nonimmigrant crewman did intend to make the United States his permanent home and domicile, he was in violation of the conditions of his admission and was not here "lawfully."

**Number 2879-Matter of Wojtkow. In Deportation Proceedings, A13 934 122. Decided by BIA, Sep. 10, 1981.**

(1) Pursuant to section 125.15(1) of the Penal Law of New York, a person is guilty of manslaughter in the second degree when "he recklessly causes the death of another person."

(2) A person acts "recklessly" when he is aware of and consciously disregards a substantial and unjustifiable risk, which constitutes a gross deviation from the standard of conduct a reasonable person would observe in the situation. New York Penal Law, section 15.05(3).

(3) A conviction for second degree manslaughter under section 125.15(1) of the Penal Law of New York is a crime involving moral turpitude. *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976), *followed; Matter of Gantus-Bobadilla*, 13 I&N Dec. 777 (BIA 1971), *modified.*

**Number 2880-Matter of Bardouille. In Visa Petition Proceedings, A-24652753 & A-24652754. Decided by BIA, Sep. 22, 1981.**

(1) In order to be eligible for relative preference classification under section 203(a) of the Immigration and Nationality Act, 8 U.S.C. 1153(a), the alien beneficiary must be fully qualified at the time the visa petition is filed.

(2) Visa petitions to classify the beneficiaries as "unmarried sons" under section 203(a)(2) of the Act are denied where the beneficiaries' alleged legitimation by their petitioner father occurred only after he filed the petitions and, therefore, they were not fully qualified as the petitioner's legitimated children under section 101(b)(1)(C) of the Act, 8 U.S.C. 1101 (b)(1)(C), at the time the visa petitions were filed.

**Number 2881-Matter of Colley et al. In Visa Petition Proceedings, PHI-N-8302-8305. Decided by Commr., June 19, 1981.**

(1) Beneficiaries, employed as aerial survey pilot, survey pilot/navigator, aerial photographer, and aerial camera operator, possessed the requisite "specialized knowledge" within the meaning of section 101(a)(15(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15(L), to be classified as intracompany transferees because their skills were necessary to operate the unique and unusually sophisticated aerial photography and computerized navigational system developed by the Canadian parent company. The petitioner has also demonstrated that all four beneficiaries have been employed by the parent company in excess of one year and that their services are essential for the successful operation of this particular equipment.

(2) In *Matter of Raulin*, 13 I&N Dec. 618, and *Matter of LeBlanc*, 13 I&N Dec. 816, the occupations did not inherently qualify the beneficiaries and the Service looked for elements beyond general job tasks and duties for the specialized knowledge related to the proprietary interests of the business, its management, and concerned skills or knowledge related to the proprietary interests of the business, its management, and concerned skills or knowledge not readily available in the job market.

(3) Specialized knowledge must be relevant to the business itself and directly concerned with the expansion of commerce or it must allow a busi-

ness to become competitive in overseas markets. *Matter of Michelin Tire Corporation*, Interim Decision 2758.

(4) Most employees today are specialists and have been trained and given specialized knowledge; however, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.

**Number 2882-Matter of Mourillon, In Visa Petition Proceedings, A-19731000. Decided by BIA, Sep. 22, 1981.**

(1) Under the law of Curacao, Netherlands Antilles, legitimation of a child born out of wedlock is effected by the subsequent marriage of the natural parents together with their prior or contemporaneous acknowledgment of the child.

(2) An act of acknowledgment of paternity in Curacao without the marriage of the natural parents does not place the acknowledged child in the same status as a legitimated child and, therefore, the petitioner did not quality as his father's "child" under section 101(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(C).

(3) In order to qualify as stepsiblings, either (1) the marriage which created the step-relationships must continue to exist, or (2) where the parties to that marriage have legally separated or the marriage has been terminated by death or divorce, a family relationship must continue to exist as a matter of fact between the "stepsiblings."

(4) Since the petitioner and beneficiary once qualified as "children" of their stepmother/mother and continue to maintain their family relationship, the beneficiary qualifies as the petitioner's "sister" under section 203(a)(5) of the Act, 8 U.S.C. 1153(a)(5), even though the record does not show whether the petitioner's father and the beneficiary's mother are still alive and remain married.

**Number 2883-Matter of M/V "Runaway", In Fine Proceedings, MIA 10/12.1222. Decided by BIA, Oct. 2, 1981.**

(1) Section 273(a) of the Immigration and Nationality Act, 8 U.S.C. 1323(a), in effect, makes the carrier of aliens an insurer that his passengers have met the visa requirements of the Act.

(2) Cuban nationals who came to the United States in the "Freedom Flotilla" of 1980 without first having filed Form I-590 (Registration for Classification as a Refugee) and having received approval for admission as refugees under section 207 of the Act, 8 U.S.C. 1157, are not exempt from the Act's visa requirements by virtue of the provisions of the Refugee Act of 1980.

(3) Since liability for fines under section 273(a) of the Act is determined as of the time the aliens are brought to the United States, it does not matter whether the aliens are subsequently admitted to the United States by the Attorney General.

(4) Reasonable diligence within the meaning of the remission provisions of section 273(C) of the Act is not established by carrier's statement that he relied on a presidential "open hearts and open arms" speech in deciding to go to Cuba where the evidence shows that he departed for Cuba prior to the speech and where the presidential speech cannot be reasonably construed as a waiver of visa requirements or as authority for bringing undocumented aliens to the United States.

(5) Reasonable diligence within the meaning of the remission provisions of section 273(C) of the Act is not established where the evidence does not support carrier's allegation that he believed that the visa requirements were waived under the Refugee Act of 1980.

(6) Reasonable diligence within the meaning of the remission provisions of section 273(C) of the Act is not established where carrier's only evidence in support of his contention that he relied on announcements of the Immigration and Naturalization Service and other federal agencies in deciding to go to Cuba was an affidavit which was factually insufficient and, therefore, not credible.

**Number 2884-Matter of Ramirez-Rivero. In Exclusion Proceedings, A-232224918. Decided by BIA, Oct. 5, 1981.**

(1) In order for a foreign conviction to serve as a basis for a finding of inadmissibility the conviction must be for conduct deemed criminal by United States standards.

(2) An act of juvenile delinquency is not a crime in the United States and an adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act.

(3) The standards established by Congress, as embodied in the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. 5031 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat, 1133 (effective September 7, 1974), govern whether a foreign offense is to be considered a delinquency or a crime by United States standards.

(4) The FJDA defines a "juvenile" as "a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday," and "juvenile delinquency" as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult." 18 U.S.C. 5031.

(5) Pursuant to section 5032 of the FJDA, 18 U.S.C. 5032, any juvenile within the jurisdiction of the federal courts alleged to have committed an act of juvenile delinquency while under 18 years of age is not subject to criminal prosecution as an adult, regardless of the nature of the offense or the potential punishment, but rather is entitled to benefit from the protective and rehabilitative provisions of the FJDA unless he waives his right, in writing upon advice of counsel, to such treatment.

(6) Inasmuch as the Board will not presume that a juvenile would opt to forego his right to be proceeded against as a delinquent in favor of criminal prosecution, the applicant's breaking and entering theft committed when he was 13 years of age, though treated as a crime in Cuba, may not as a matter of law be deemed criminal by United States standards and therefore is not an excludable offense under section 212(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9). ■

30/3

NEWARK PUBLIC LIBRARY

JUL 6 1982

U. S. GOVT. PUBS.
DEPOSITORY 376

# INS Reporter

Immigration and Naturalization Service U.S. Department of Justice Spring 1982

Introducing Alan C. Nelson
Areas for Emphasis
The INS Forensic Document Laboratory
Adopted and Prospective Adopted Children
An Analysis of the Efficiency Legislation

J 21. 10/2:

# INS Reporter

**Spring 1982**

**United States Department of Justice**
William French Smith, Attorney General

**Immigration and Naturalization Service**
Alan C. Nelson, Commissioner

## Contents

Volume 30, No. 3

Introducing Alan C. Nelson 1
Areas for Emphasis 2
The INS Forensic Document Laboratory 4
Adopted and Prospective Adopted Children 8
Changes in the Regulations 10
An Analysis of the Efficiency Legislation 11
Administrative Decisions 15

**Immigration and Naturalization Service**

Doris M. Meissner
**Acting Deputy Commissioner**

Perry A. Rivkind
*Acting Associate Commissioner*
*Management*

Joseph F. Salgado
*Associate Commissioner*
*Enforcement*

Andrew J. Carmichael, Jr.
*Associate Commissioner*
*Examinations*

Robert A. Kane
*Associate Commissioner*
*Operations Support*

James A. Kennedy
*Acting Comptroller*

Harry A. Scarr
*Acting Associate Commissioner*
*Planning & Evaluation*

Maurice C. Inman, Jr.
*General Counsel*

Verne Jervis
*Public Information Officer*

Janet R. Graham
*Editor*

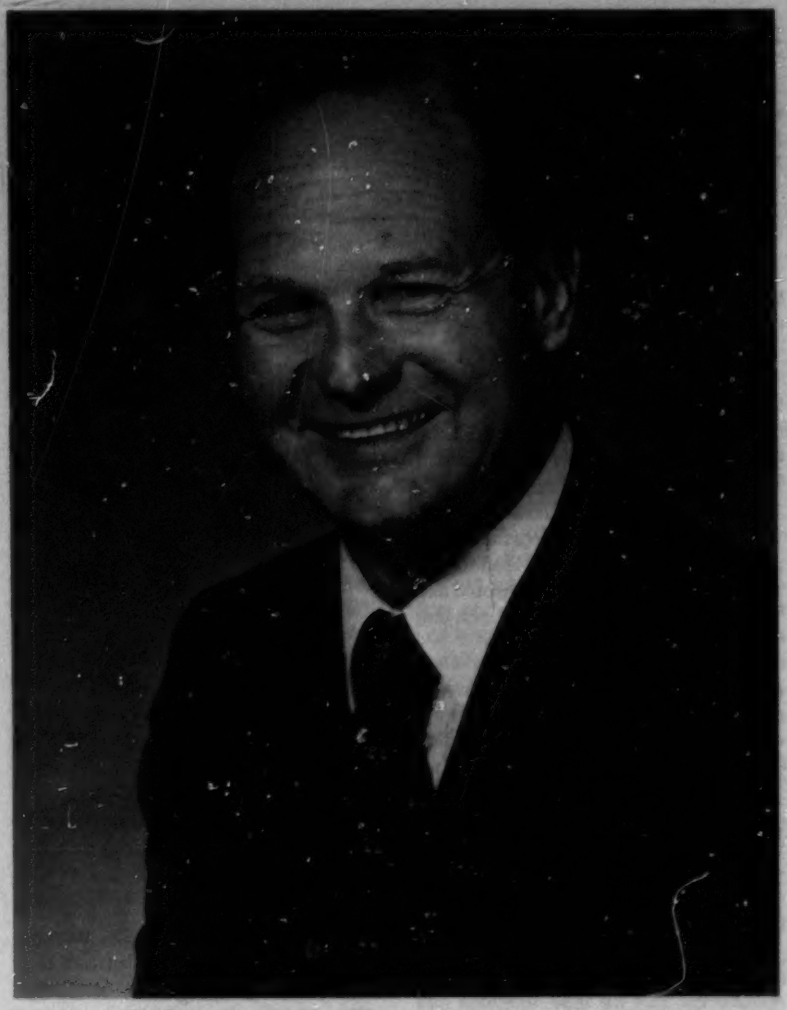
**Cover:** The INS Forensic Document Laboratory (FDL), established in 1980, provides scientific and technical support to INS officers in determining the authenticity of suspicious documents uncovered during inspections, examinations, or investigations. One method used in detecting fraudulent documents is the macrophotography system. This system enables the Document Examiner to identify and highlight the smallest alterations in passports, visas, and other documents.

*The opinions expressed are those of the authors and do not necessarily reflect the views or policies of the Immigration and Naturalization Service.*

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of this Agency.

# INS Reporter

# INTRODUCING ALAN C. NELSON OUR NEW COMMISSIONER



Alan C. Nelson

Alan C. Nelson, former member of the Reagan Administration in California and General attorney for Pacific Telephone and Telegraph Company in San Francisco, has assumed the position of Commissioner of Immigration and Naturalization.

President Ronald Reagan nominated Mr. Nelson on November 18, 1981, to fill the post which had been vacant since Leonel J. Castillo resigned on October 1, 1979. His appointment was confirmed by unanimous consent of the U.S. Senate on February 8, 1982.

Mr. Nelson, 48, took the oath of office at a ceremony held at the INS Central Office on February 22, 1982. Attorney General William French Smith administered the oath of office.

In his remarks following the swearing in, Attorney General Smith said, "Now, under the direction of Commissioner Nelson, we must invigorate and organize the Service so it can perform its functions effectively, expeditiously, and fairly. No reform legislation, however enlightened, can have more than a cosmetic effect until this is done. That is why Alan Nelson has been chosen to be Commissioner and that is what we must set about doing. Commissioner, this is a responsibility in which you enjoy my full support and that of the Department."

Mr. Nelson was appointed Deputy Commissioner on September 23, 1981. Prior to that appointment, he had been a General Attorney with Pacific Telephone and Telegraph since 1976. From 1972 through 1975 he was Director of the Department of Rehabilitation for the State of California, and from 1969 through 1972 served as Assistant Director for the Department of Human Resources Development (now known as the Employment Development Department) for the California state government.

He was Deputy District Attorney for Alameda County from 1964 through 1969, and an attorney in the law firm of Rogers, Clark & Jordan from 1958 through 1964.

During his six years in the state government in California, Mr. Nelson played a key role in developing and gaining passage of Governor Reagan's welfare reform program. Also he was former Chairman of the California Governor's Committee for Employment of the Handicapped. He received numerous awards from various public and private organizations for his role in working with the handicapped in California.

Upon his appointment to the Deputy Commissioner post in September, the Attorney General said, "Alan Nelson brings to INS a solid background of achievement in management, both in business and government, and will make a significant contribution in strengthening our Nation's Immigration Service."

He is a 1958 graduate of the University of California Law School, and earned his undergraduate degree in business administration at California. He is a member of the State Bar of California and the American Bar Association.

Mr. Nelson is married and has three children. ■

# Areas for Emphasis[1]

By Alan C. Nelson
*Commissioner*

Today, I should like to focus my testimony on the three major areas I intend to emphasize as Commissioner of the Immigration and Naturalization Service. These areas are: legislative reform, immigration policy leadership, and effective management. I would like to discuss them in some detail with you today.

**Legislative Reform**

Reform of our immigration laws is essential to the future effectiveness of the Service. The Administration has set the establishment of a sound immigration policy as a matter of high priority. The Omnibus Immigration Control Act, proposed by the Department of Justice, has been introduced in both Houses of the Congress. This legislation addresses the most serious immigration problems confronting our nation. It provides a means of discouraging illegal immigration through an employer sanction program; increases in traditional enforcement efforts both at the border and in the interior; and calls for a new, experimental temporary worker program. It curtails mass arrivals of undocumented aliens by sea by streamlining the procedures for determinations of admissibility and asylum applications, and enables the President to invoke certain powers in order to respond adequately to immigration emergencies. Recognizing that it is unrealistic to remove many illegal aliens already in the U.S. the proposal calls for legalization of illegal aliens who arrived prior to January 1, 1980, to the status of temporary resident. Finally, the legislation proposes increased numerical limitations for immigration from Mexico and Canada, and streamlines the labor certification process to protect American workers against adverse impact from foreign workers.

The urgent cause of national immigration reform was further served by the announcement last week of Congressman Mazzoli and Senator Simpson's legislative proposals. This work represents months of diligent review and analysis and a clear vision of the national interest. It builds on the work of earlier Congresses, particularly the long-standing leadership on this issue displayed by Chairman Rodino. The Administration applauds your efforts. The Simpson-Mazzoli bill is similar in many ways to the Administration proposal and contains the essential elements of comprehensive reform of our laws. I am confident we can work constructively together to achieve effective legislative change.

The Administration remains firmly committed to immigration reform and urges Congress to move quickly in this area.

Our FY 1983 resource request does not include funding estimates for the implementation of new legislation. We are working closely with the Department of Justice and OMB to develop cost estimates for the proposals before you.

**Policy**

An effective immigration policy requires firm leadership by the executive branch of government. This is especially important as many immigration actions have foreign policy and domestic political ramifications. My goal is to make INS an agency that anticipates upcoming requirements rather than one that merely reacts to situations as they arise.

My policy is one of inter-agency cooperation and coordination with respect to INS activities. I have already established a good working relationship with the Departments of Treasury, State, and Agriculture, especially with the U.S. Customs Service in Treasury and the Bureau of Consular Affairs in the Department of State. All of us recognize that this kind of cooperation is essential if an effective national immigration policy is to be implemented.

**Effective Management**

My third area of emphasis, Mr. Chairman, is improved and effective management of the Immigration Service, and I would like to devote the major portion of this statement to a discussion of the programs we are implementing in INS to achieve major management reform. The overall accountability, responsiveness, and effectiveness of the agency is being addressed by instituting a system of management by objectives which holds senior Service executives directly accountable for achieving management reform in specific program and management areas. This effort focuses on eight broad areas for improvement. These are:

- Improvement in service to the public and elimination of backlogs;
- Improvement in the effectiveness of enforcement activities;
- Improvement in information collection and storage;
- Improvement in personnel management and the organization of the agency;
- Improvement in resource management;
- Effective implementation of legislative initiatives;
- Enhanced inter-agency cooperative efforts; and
- Improvement in hearing procedures.

These improvements will not come about overnight. The goals of the Mission Plan have been translated into specific priorities for FY 1982. I am determined that these reforms will be implemented quickly, yet with sufficient deliberateness to assure that they take hold and make substantive, not just cosmetic differences.

To execute these eight major program objectives, the following steps have been taken: First, the Service has established concrete priorities and assigned responsibility for those priorities to specific executives in the Service.

[1]This article is taken from testimony presented by Mr. Nelson on March 29, 1982 before the Committee on the Judiciary, Subcommittee on Immigration and Refugee Policy of the U.S. Senate.

Each priority has a specific timetable associated with achieving each goal, so that we can objectively measure progress. Second, I will personally review the progress achieved in meeting these objectives on a quarterly basis, and require an explanation for lack of progress or a diversion from the implementation schedule. Third, we have tied performance reviews and ratings of our management personnel to the accomplishment of the tasks outlined in our program goals. Finally, we will update our priorities and program objectives annually through a process of re-establishing targets. Thus, this system will be responsive to changing circumstances, such as new legislation, new Administrative initiatives, and/or any immigration related crisis. However, at the same time, I believe the agency will be more rigorously managed and directed, and can effectively demonstrate a commitment toward achieving significant reforms, even in the midst of unexpected crises that our agency will undoubtedly undergo.

In the context of this overall system for managing the activities of the agency, let me discuss some of the specific reforms underway within each of the eight pricrity areas—reforms which I believe will be of particular interest to the committee.

### Service to the Public and Elimination of Backlogs

First, Mr. Chairman, we are improving our service to the public by streamlining our adjudications processing. We are reducing interview requirements; expanding out test of regional adjudications centers to complete adjudications which do not require personal interviewing; and significantly increasing the total number of adjudications which we handle by means of "upfront" processing at the time of an application for benefits. As you know, the latter process means that an applicant is seen only once and all his business with us is completed without the necessity of rescheduled appointments, second visits, and so forth.

We are also improving service by implementing a standard non-immigrant admissions policy for visitors with B-2 visas. Although these proposed regulations are still in the process of being reviewed, we are confident that setting fixed time lengths of stay for these non-problem visitors will speed the processing of visitors at airports, and will reduce our district office paperwork by eliminating large numbers of unnecessary extensions of stay.

Finally, we have recently completed several studies of improved telephone services to answer more expeditiously the most common questions asked of our personnel at District Offices. We are encouraged by our preliminary results in several cities, and we will expand this program as rapidly as possible in the future. Such an emphasis will certainly eliminate much of the aggravation felt by many applicants for benefits, who simply need information, and not other services. Furthermore, we are examining the concept of regional telephone centers and similar techniques employed by large organizations with similar missions. Decisions on these proposals will be made in the next several months.

### Enforcement Activities

We are improving our enforcement activities in many ways, but most especially by continuing our emphasis on targeting enforcement resources for greatest effectiveness by assigning new and existing resources, to the extent possible, to those areas having the highest incidence of illegal entry. Furthermore, we are assuring that sufficient resources are available for removing apprehended aliens at those points, as well as monitoring the use of officer time to ensure that it is appropriately concentrated on direct enforcement activities.

We are also concentrating our investigative resources on what we call area control, that is, investigation of employers of illegal aliens having the greatest potential economic impact in a particular area. In line with this movement toward more strategically critical enforcement activities, we are focusing our anti-smuggling efforts on major violators, particularly in those instances where there is a high likelihood of conspiracies.

Finally, Mr. Chairman, in addition to maintaining sufficient detention space at our existing facilities to ensure adequate detention and deportation capabilities, we are developing plans for the orderly expansion, as needed, of such facilities to cope with possible future emergencies.

### Information Collection and Storage

As your committee knows, Mr. Chairman, information collection and storage, data processing, and the use of data in planning our agency's activities, is an area needing dramatic improvements. I am pleased that the Service has completed a long-range, automated data processing plan to establish computerized information systems to allow the Service to make more effective use of information. The implementation of that plan has already begun. We are installing an interim naturalization and casework support system in Los Angeles, and we shall shortly begin installing a deportable alien deportation system in San Diego. We shall assess these systems as soon as they are operational, to ensure their quick transfer to other offices as resources become available.

The Non-Immigrant Document Control system is being developed according to plan and is scheduled for introduction in January, 1983; bids for contract of the system are being received by INS at the present time. The I-94 system backlogs will be eliminated during this calendar year so that information about non-immigrants in the U.S. will be current and readily available for enforcement and planning purposes within a year. We appreciate the continuing support this committee has given to non-immigrant control and we are pleased to be able to report favorably on our progress.

I know that the committee staff has been briefed recently on our ADP and service improvements efforts so I am pleased that you are fully informed of our activities.

### INS Management and Organization

We have just completed an organizational issues and decision process study of the Service. I am reviewing the results of that study in order to effect those changes which I think necessary

to enhance Service capabilities. In addition, and as I am sure you are aware, the PMIC study which was recently completed made a series of recommendations for specific managerial reform of the agency. Many of these have already been implemented; the remainder are in the final stages of review as to suitability for implementation.

**Resource Management**

Although all the efforts I have noted have substantial implications for managing the resources of the Service, there are two items to which I would draw your particular attention. We hope to see legislation that eliminates 1931 and 1911 Act overtime and employs the 1945 Act (modified) provisions applicable to all other government employees.

Second, we have undertaken a thorough review of all fees toward the goal of increasing revenue to the government by employing realistic user fees to all applicable areas of INS activity. Our review will be complete in April and we are targeting an October 1, 1982, implementation date. I note that the Simpson-Mazzoli legislation states the sense of Congress that these steps should be taken.

Finally, we are continuing efforts to assure that resources are concentrated as much as possible at high-volume, high-risk ports of entry. We are considering a variety of options in this area, and we are encouraged that we can effect substantially enhanced efficiencies by readjustments at some points along the border, and by cooperative efforts in conjunction with our sister agencies, most especially Customs and Agriculture.

**Effective Implementation of Legislation**

As I indicated earlier, we are pleased that the committee is now considering immigration reform legislation. We look forward to working with you in seeking common ground between your proposal and the Department's proposal. We are developing implementation plans for the various initiatives under discussion. By including implementation planning of new legislation as one of our major FY 82 program goals, we can assure you that we will be prepared to execute new legislation in an efficient professional manner promptly upon enactment.

**Inter-Agency Cooperation**

Among our inter-agency cooperative efforts has been the recent completion of a crisis management plan. The Department of Justice will assume the lead for the Administration in the execution of that plan, should another Mariel or similar incident occur. The plan is currently under review within the Administration.

We have also given renewed emphasis to joint efforts with the Departments of State, Treasury, and Agriculture. Examples are accelerated planning toward increasing facilitation combined with more effective enforcement at ports of entry. We hope to have facilitation measures in place to meet this summer's travel demands.

**Hearing Procedures**

We are undertaking changes in agency hearing procedures, designed to simplify those procedures, and to assure adequate administrative support. We are particularly concerned that special inquiry operations have adequate performance and administrative support, and that cases are processed in more timely fashion. The similar reforms proposed by the Administration and by Congressman Mazzoli and Senator Simpson are essential in this regard.

In addition, the Department of Justice has plans to transfer the immigration judges from the INS and consolidating them with the Board of Immigration Appeals within the Department of Justice. Congressman Mazzoli and Senator Simpson have proposed a similar structure reform in your bill. We will want to work closely with you to achieve the goals we both seek of fair and expeditious adjudications. Such reforms will enhance the fairness of the appeals process in immigration matters, and will create a more independent, professional immigration judiciary free from the appearance of conflicts of interest.

These, then, Mr. Chairman, represent a sample of the specific efforts underway in relation to the eight priority areas on which I am focusing as I concentrate efforts to improve the management of the Immigration and Naturalization Service activities. ■

# The INS Forensic Document Laboratory

By Robert G. Lockard
*Chief Examiner*
*Forensic Document Laboratory*
*Central Office*

The majority of drug smugglers and many of the aliens attempting to illegally enter the United States, although having different motives for their actions, usually have one thing in common when apprehended; they are in possession of false documents. Even the would-be assassin of the Pope was in possession of bogus papers.

A Justice Department report estimated that 80 percent of all hard drugs flowing into the U.S. were smuggled in with the aid of fraudulent passports. Today, as many as 300,000 fugitives and terrorists use false identity papers, including U.S. passports and visas, to travel around the world.

On an international scale, document fraud is reported to be increasing. On our own international borders, it is most apparent among foreign nationals who either attempt to pass inspection at our ports of entry or after gaining illegal entry use false documents to support their claims to legal residence.

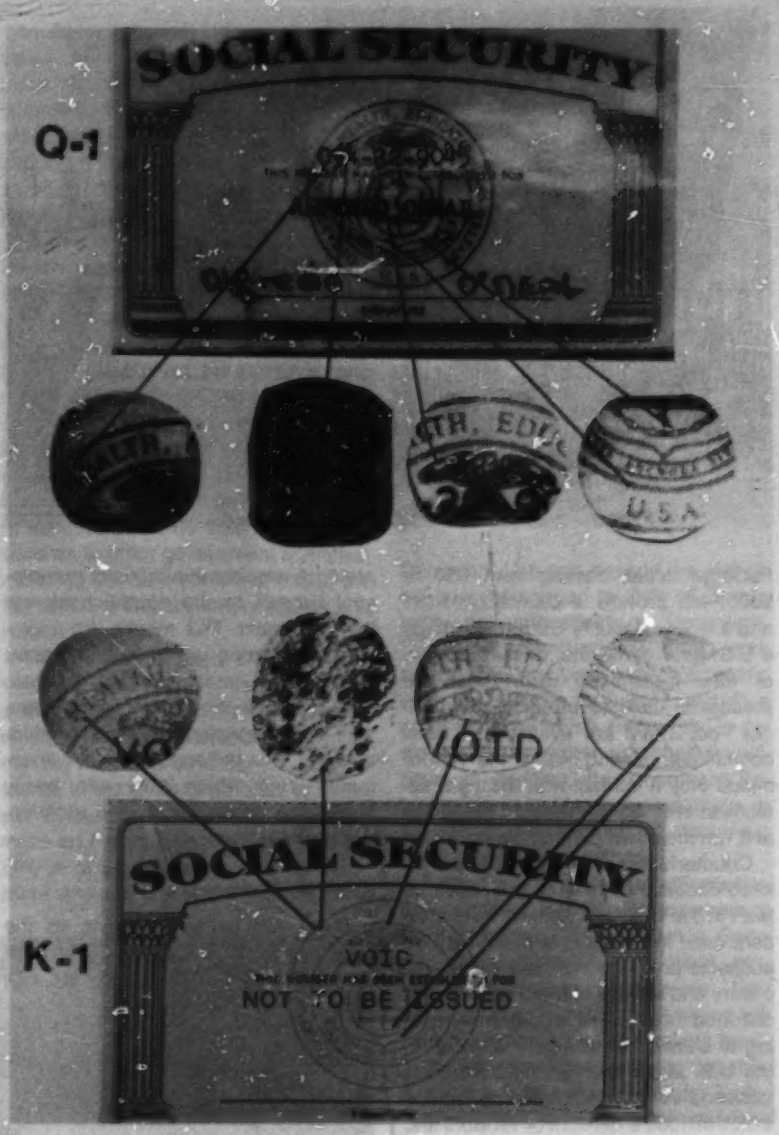
Document falsification has troubled government agencies as well as commercial enterprises throughout history.

New research and technology are continually being sought to overcome the inadequacies of those documents that can be easily counterfeited or altered.

INS has waged a continuing battle to control fraudulent document activity. With the advent of the new I-551, Alien Registration Receipt Card, and the I-586, Border Crossing Card, the two major documents used for legal admission to the United States, some progress has been made toward controlling fraud. However, there are many other useful documents which are also subject to fraud, such as immigrant visas, passports, birth certificates, and marriage and divorce certificates.

To aid in detecting this type of fraudulent activity INS, in 1978, proposed establishment of a Forensic Document Laboratory (FDL) to provide INS officers with scientific and technical expertise in the complex art of document fraud. Congress was concerned by the growing problem and, in 1979, approved the allocation of funds to establish a facility within INS. That facility currently is located in temporary quarters within the INS Central Office, and is a part of the Intelligence Branch of the Enforcement Division.

Basically, there are three types of document fraud encountered by authorities. Alteration, which involves changing the indentifying data on a document, including the photograph, name, birth dates, etcetera; counterfeiting, which is the fabrication of an entire document so that it resembles a validly issued official document; and impersonation, which involves the presentation of a legal document by someone other than the rightful owner.




The counterfeiting of Social Security Cards is a common practice. The two Social Security Cards shown here compare the differences in a counterfeit card (top) to an authentic card (bottom). Note the printing process of the top card results in a much darker seal. Other identifying features are illustrated by the enlarged areas in the center.

### Alteration

The alteration of Service documents, mainly the old I-151, Alien Registration Receipt Card, has been a common practice for years. When altered, the product may vary from excellent to crude depending upon the experience of the fabricator and the equipment available to him. The ready availability of commercial "do-it-yourself" laminating kits and photo-ID systems has been a boon to those who are intent on tampering with the integrity of Service documents.

The principal methods employed usually involve a substitution of the photograph and an attempt to change the name, birth date and other information so it will fit the new bearer of the document. Although some photo-switches and subtle changes can be skillfully executed, the practiced eye of an Immigration Officer frequently can detect the fraud. But, the state of the art is becoming more refined and too many bogus documents are in circulation. In addition, it takes time to determine the authenticity of documents that are of questionable validity.

### Counterfeiting

Along some border areas, the most popular method of obtaining a document to prove legal status in the U.S. is from vendors of counterfeit materials.

Using a Polaroid camera, the Document Examiner is able to take close-up photographs of specific areas of a questioned document so that the details can be compared with a legitimate one.

Package deals, costing from $50 to $300, will provide a counterfeit I-151 and a Social Security Card, or perhaps a U.S. birth certificate, driver's license or voter registration card. Since the processes used to produce the "official" document are available in most commercial printing plants, the vendor needs only a contact with the right establishment. Some vendors establish and run their own printing plants.

Counterfeiters of immigration and related documents have been uncovered both in the U.S. and abroad. In one recent case in Chicago, a search of the suspects premises resulted in the discovery and seizure of more than 48,000 assorted counterfeit documents relating to citizenship or legal residence in the U.S. Many counterfeiters have established very sophisticated operations which include a network of vendors and "runners," who contact potential customers in advance of their actually entering the U.S.

**Impersonation**

Impersonation is simply the act of representing yourself to be another individual, usually by use of documents legally obtained by that individual. The pretense requires the impostor to represent himself as the rightful holder of that document. This means the photograph appearing on the document, as well as the data contained thereon, must resemble the impostor. Some vendors of documents maintain a large inventory of unaltered Service documents from which they can easily match the requirements of a prospective customer.

**Scientific Examination**

There are many variations to the three types of document fraud just described and, although Service officers are generally adept at spotting documents in the hands of impostors, or documents that have been counterfeited or altered, many slip by because the fraud perpetrated cannot be detected without a scientific examination. There are many documents in existence today which are produced in such a way that only a careful laboratory examination will answer the question of authenticity.

With establishment of the FDL, Service officers are now able to obtain a scientific examination of suspicious documents uncovered during official inspections, examinations, or investigations. The current work of the laboratory largely involves the identification of latent evidence of document fraud regarding forgeries, spurious typewriting, suspect printing processes, counterfeits, the authentication of official stamp impressions and the detection of alterations, eradications and obliterations.

The laboratory has been deeply involved in these processes but is not fully operational pending the completion of staffing requirements and location of a permanent facility. Once this is accomplished, additional laboratory equipment can be installed which will allow basic paper and ink examinations to be conducted, and special or general

A comparison is made of the various features of the suspected counterfeited document to that of a legitimate one. Such features include checking the wavering lines across the face of the photo and the perforations appearing in both the legitimate and counterfeited document.

photographic processing will be possible.

In addition, a comprehensive file of known or authenticated travel documents is being accumulated by the FDL from world-wide sources, with special emphasis being given those countries, such as Haiti and the Philippines, where there is a particularly high rate of fraud. One of the major contributions of the laboratory will be realized when samples of genuine and bogus documents are collected and more detailed information regarding new techniques of document fraud are made available. The collection will ultimately provide a constructive foundation for the development of several document formats that will be difficult, if not impossible, to counterfeit or duplicate.

**FDL Contributions**

The FDL, in its short period of existence, already has contributed to INS enforcement efforts in a number of ways. It has been instrumental in developing a "secure" Contrares-Bell letter which replaced the highly vulnerable type letter issued in Silva-Levi cases[1]; assisted in the prototype TRWOV hand stamp[2] with built-in security features; and, more recently, assisted in developing a new security ink for the exclusive use of INS.

In addition to mass document fraud cases from Afghanistan, the Philippines, Caribbean and Latin American countries, FDL Document Examiners also have provided expert testimony in support of the Government's case at a number of immigration and court hearings.

One of the first requests received by the newly established FDL was from the Office of Special Investigations, Department of Justice, to examine and authenticate 40-year-old documents bearing questioned handwritings and signatures of alleged Nazi war criminals. Subsequently, INS Document Examiners testified in court as expert witnesses in the denaturalization hearings of several of these individuals. In addition, the FDL has provided assistance to other government agencies, including the Department of State, the FBI, and the Department of Health and Human Services.

There are three major areas in which the FDL can provide assistance: (1) authentication of documents; (2) expert testimony in legal proceedings; and (3) training or familiarizing Service employees as to the value of physical or forensic evidence. With fraud becoming more and more sophisticated, the detection of bogus documents becomes more and more difficult. The Forensic Document Lab can provide the technical support needed by INS officers to verify the authenticity of documents. This would eliminate any guess-work and, at the same time, provide scientific evidence suitable for presentation in a court of law, which frequently is far more persuasive than use of an eyewitness. In addition, the Document Examiner can provide expert testimony in support of his findings of document fraud in legal proceedings.

Using a hand magnifier, the Examiner is able to study the handwriting on a suspected forged document. This is but one of several steps in determining forgery.

Some training of Service officers has been provided by FDL staff members at the INS training facility in Glynco, Georgia. Once the FDL has been permanently located and more fully staffed, it is anticipated that training will be provided on a regular basis to familiarize Service officers with the capabilities of the FDL, what to look for in detecting fraudulent documents, and how to prepare the evidence for examination by the lab.

The potential of the INS Forensic Document Laboratory is yet to be fully realized. The question is frequently asked whether or not a totally counterfeit-proof document is possible to devise. Nothing is impossible. However, it will require the time and the facilities for the necessary research to create a document that cannot be successfully

Here the Document Examiner prepares a chart for use in support of his testimony in court concerning either forged or legitimate handwriting.

compromised. Again, a major contribution to this end will be the comprehensive collection of genuine and bogus documents, which will provide the foundation for development of a foolproof document. With some luck, I believe it can be done. ■

**Footnotes**

[1]In the case of Silva v. Levi, the court ruled that 144,999 immigrant visas, previously issued to Cuban refugees between 1968 and 1976, should be allocated to would-be Western Hemisphere immigrants who had sought visas during that same period. Thus, persons falling within this category were issued "Silva-Levi" letters by INS allowing them to remain and work in the U.S. pending resolution of the suit. This letter was easily compromised. In Contreras-Bell, which involved similar circumstances to Silva-Levi, a more secure letter was developed and issued by INS to persons covered by this suit.

[2]The term TRWOV refers to persons who "transit (the U.S.) without visa" destined to another country. The TRWOV hand stamp is used by inspectors in noting the alien's I-94, Arrival-Departure Record.

## The FDL Staff

Robert G. Lockard, the Chief Examiner of the new facility, was formerly Assistant Director and Training Officer for the U.S. Postal Inspection Service Crime Laboratory in Washington, D.C. He has over a quarter century of law enforcement experience with some 20 years specifically related to the scientific, technical and operational aspects of forensic laboratories. He began his career with the Eugene, Oregon Police Department Crime Laboratory and later served with the Department of State overseas as a technical advisor. He graduated from the University of Oregon, has a Master's degree in Forensic Science, and has been certified by the American Board of Forensic Science Document Examiners and currently serves as a member of that body.

Gideon Epstein and William McCarthy, two nationally recognized experts in the field, are members of Mr. Lockard's staff.

Mr. Epstein, after some 22 years of service, retired from the U.S. Army Crime Laboratory in 1978 as Chief Document Examiner. He subsequently spent two years with the Treasury Department's Alcohol, Tobacco and Firearms National Laboratory in Rockville before joining INS in 1980. Mr. Epstein holds a Bachelor of Science degree from the University of Nebraska (1974) and has completed requirements for a Master's degree in forensic science.

Mr. McCarthy joined INS in late 1980. From 1972 to 1979 he was a Document Examiner with the Police Laboratory of the New York City Police Department and from 1959 to 1972 was a Police Officer/Investigator with that Department. Prior to joining INS, he was in private practice in New York City as a handwriting expert. He holds a Bachelor of Science degree from the N.Y. Institute of Technology (1976) and received a Master's degree in Public Adminstration from Long Island University in 1978. ■

# Adopted and Prospective Adopted Children

By Alice Strickler
*Immigration Examiner*
*Adjudications Division*
*Central Office*

It has been INS policy to expedite orphan petitions for humanitarian reasons and to provide adoptive and prospective adoptive parents of foreign orphans with the best possible service. In doing so, INS has been carrying out the intent of Congress which, in enacting orphan legislation, was primarily concerned with the welfare of the children.

### Background

From 1948 to 1960, various temporary laws were passed permitting the admission to the United States of foreign-born orphans. In 1961, the provisions relating to orphans became a permanent part of the Immigration and Nationality Act. These provisions were subsequently amended in 1965, 1975, 1978, and 1981. (See accompanying box for legislative citations.)

There has been a general trend over the years towards streamlining the processing of orphan cases. The checks of the records of other agencies for information relating to orphan petitioners, which were once required by INS, have been eliminated except for the fingerprint checks. Delays in processing petitions were greatly reduced some years ago by having the overseas investigation conducted at the time of visa issuance rather than while the petition was pending. The purpose of the overseas investigation is to verify that the child is an orphan as defined by the statute, and to determine whether the child may have a significant affliction or disability not set forth in the petition.

On August 23, 1979, a final rule was published in the Federal Register amending the regulations to permit advance processing of an orphan petition in any case where an eligible petitioner requests it prior to actual location of a child for adoption.[1] This eliminates unnecessary delays once a child is located. Previously, official INS policy permitted advance processing of an orphan petition only when the petitioner and spouse, if married, were traveling abroad expressly to locate and adopt a child.

On November 14, 1980, revised regulations, concerning petitions based on adoptive relationships, were published in the Federal Register.[2] The amendments provide more flexibility in the filing and processing of orphan petitions and requests for advance processing of these petitions. For example, one of the revisions permits the filing of an orphan petition on behalf of a known child even though the home study required by the statute, or the documentary evidence relating to the child, is not yet available.

In addition, the regulations published in November 1980 enable a child who is in the U.S. in parole status, and who has not been adopted in the U.S., to be eligible for the benefits of an orphan petition and adjustment of status on that basis when all statutory requirements

have been met. This is a liberalization of a prior INS policy under which an orphan petition could not be granted on behalf of any child in the United States.

### Statutory Complexities

Adoptive and prospective adoptive parents of foreign-born orphans face very complex requirements. These are all a direct result of statutory requirements which appear in Sections 101(b)(1)(F), 204(a), 204(b), and 204(d) of the Act. INS has kept the documentary, regulatory, and procedural requirements at a minimum while conforming to the Congressional intent. In addition to the INS requirments, orphan petitioners must also comply with foreign and often state adoption laws.

The term "orphan" as defined in Section 101(b))1)(F) of the Act means a child under the age of 16 when a petition is filed on his or her behalf, who has no parents "because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents" or who has a sole or surviving parent. In the latter instance, the parent must be "incapable of providing . . . proper care" and must irrevocably release "the child for emigration and adoption."

The child must be adopted abroad or be coming to the U.S. for adoption. If the child is adopted abroad, the adoptive parent(s) must personally see and observe the child prior to or during the adoption proceedings. If the child is coming to the U.S. for adoption, the prospective parent(s) must comply with the preadoption requirements, if any, of the state where the child will reside.

The adoptive or prospective adoptive parent(s) must be a U.S. citizen and spouse or an unmarried U.S. citizen at least 25 years of age. Section 101(b)(1)(F) requires that the Attorney General be "satisfied that proper care . . . be furnished the child if admitted to the United States."

Once a child is classified as an orphan under the Act, he or she is considered to be an immediate relative for the purpose of becoming a lawful permanent resident. Therefore, he or she does not need a visa number.

### Home Study Requirement

A home study must be submitted in support of an orphan petition. According to Section 204(d) of the Act, the home study must be "favorably recommended by an agency of the state of the child's proposed residence, or by an agency authorized by that state to conduct such a study or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States."

Under the regulations, "the term 'agency' includes both organizations and individuals."[3] Additionally, the regulations indicate that a home study must contain an evaluation of the adoptive or prospective adoptive parent(s)' "financial, physical, mental, and moral capabilities . . . to rear and educate the child properly" and a description of their living accommodations and the accommodations where the child will reside.[4]

INS operations instructions allow the home study to be conducted by an unlicensed or foreign agency as long as it is favorably recommended by a responsible state agency or licensed agency. This provision is especially useful in a case where the petitioner resides outside the U.S.

### Abandonment

The statute plainly states the requirement for establishing that the child of a sole or surviving parent is an orphan. Furthermore, the regulations clearly define sole or surviving parent, as follows:

> A child shall be considered as having a sole parent, his/her mother, when it is established that the child is illegitimate and has not acquired a stepparent. . . . A child shall be considered as having a surviving parent when it is established that one of the child's parents is living while one is deceased and the child has not acquired a step-parent. . . .[5]

On the other hand, the statute does not define the term "abandonment," and the subject is only discussed once in the regulations:

> A child who has been unconditionally abandoned to an orphanage shall be considered as having no parents. However, a child shall not be considered as having been abandoned when he/she has been placed temporarily in an orphanage, if the parent or parents intend to retrieve the child, or the parent or parents are contributing or attempting to contribute to the child's support, or the parent or parents otherwise exhibit that they have not terminated their parental obligations to the child.[6]

Only one precedent decision, *Matter of Del Conte*, 10 I&N Dec. 761, deals with the issue of abandonment. In that decision, it was found that the children of an adulterous relationship were abandoned.

In the absence of other guidelines, it is extremely difficult, in adjudicating orphan petitions, to make a determination regarding abandonment when the child has not been unconditionally abandoned to an orphanage or when the child was not born of an adulterous relationship. Each case must be decided on its individual merits at the discretion of the District Director. Nevertheless, the following two definitions may prove useful. *Black's Law Dictionary* defines the term "abandon" as:

> To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. . . . To give up absolutely; to forsake entirely; to renounce utterly; . . . to desert. It includes the intention, and also the external act by which it is carried into effect.[7]

According to *Corpus Juris Secundum:*

> . . . abandonment by a parent means neglect and refusal to perform the natural and legal obligations of care and support, or conduct which evinces a settled purpose to forego all parental duties and all parental claims to the child. Unequivocal and absolute abandonment must be shown.[8]

While a finding of abandonment normally may be made when the child is in the custody of an orphanage or an orphanage-like institution or when the child is a ward of the court, the definition of the term "abandonment" should not be limited to those instances.

In the case where a child is a ward of the court, the parents must have exhibited a refusal to meet the natural and legal obligations for care and support of the child and a determination to forego all parental claims to the child. On the other hand, if the parents have been deprived of custody only temporarily, and they are being given an opportunity to care for the child properly, the child would not be considered an orphan.

Furthermore, if there is evidence that the child has been made a ward of the court merely as a contrivance to enable the child to immigrate to the U.S., the child would not qualify as an orphan.

If the decree declaring the child to be a ward of the court does not describe circumstances which would establish that he or she is an orphan, other appropriate evidence of abandonment must be submitted in support of the petition.

### Other Sections Concerning Adoptive Relationships

Although Section 101(b)(1)(F) of the Act is the section under which most adoptive and prospective children gain immigration benefits,[9] there are two other sections of law under which immigration benefits may be obtained through adoptive relationships—Sections 101(b)(1)(E) and 203(a)(7). It should be noted, however, that all three sections specifically provide that natural parents and, in the case of Sections 101(b)(1)(F) and 203(a)(7), prior adoptive parents, *may not* be accorded any immigration benefits through their previous relationship to the child.

At the present time, there is no limit on the number of petitions for children defined by Section 101(b)(1)(E) or (F) of the Act, which may be approved for any one petitioner. Until 1978, however, there was a limit of two petitions.

Immigration benefits may be obtained under Section 101(b)(1)(E) based on an adoptive relationship if the child was adopted before the age of 16 and if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. While the legal custody must be after the adoption, residence occurring prior to the adoption can satisfy the residence requirement.[10] In addition, the legal custody and residence requirements may be satisfied when they have been met by only one of the adopting parents rather than both.[11] In other words, a petition may be granted when only the petitioner's spouse has met these requirements, provided that the spouse has also adopted the child. Moreover, no home study is required by Section 101(b)(1)(E).

Section 203(a)(7), which relates to nonpreference classification, provides that there must be a favorably recommended home study and an irrevocable release for emigration and adoption in the case of an adopted or prospective adopted child of a U.S. citizen or lawful permanent resident. It stipulates further than no immigrant visa can otherwise be issued to a child under 16 years of age "except a child who is accompanying or following to join his natural parent." Although it is easier for an adopted or prospective adopted child to qualify under nonpreference than under Section 101(b)(1)(F), the issuance of a visa or adjustment of status under nonpreference is contingent upon the availability of a visa number. ■

**Footnotes**

[1]44 FR 49430, Aug. 23, 1979, amending 8 CFR 204.1(b).
[2]45 FR 75186, Nov. 14, 1980, amending 8 CFR 204.1(b) and 204.2(c)(7); adding a new §204.2(e) and (f); and redesignating the existing §204.2(e) and (f).
[3]8 CFR 204.2(d)(1).
[4]8 CFR 204.2(d)(2).
[5]8 CFR 204.2(d)(1).
[6]Ibid.
[7]5th ed. 1979.
[8]2 C.J.S. Adoption of Persons §61 (1972).
[9]H. Rep. 1301, 95th Cong., 2nd Sess., p. 2.
[10]8 CFR 204.2(c)(7). Also, see *Matter of M—*, 8 I&N Dec. 118, and *Matter of Cho*, 16 I&N Dec. 188.
[11]*Matter of Y—K—W—*, 9 I&N Dec. 176.

## Orphan Legislation

Temporary Laws

1) Act of June 25, 1948, Sec. 2(e) (Displaced Persons Act of 1948, 62 Stat. 1009, 1010, Public Law 774-80th Congress).
2) Act of July 29, 1953 (67 Stat. 229, Public Law 162—83rd Congress).
3) Act of August 7, 1953, Sec. 5 (Refugee Relief Act of 1953, 67 Stat. 400, Public Law 203—83rd Congress).
4) Act of September 11, 1957, Sec. 4 (71 Stat. 639, Public Law 85-316).
5) Act of September 9, 1959, Sec. 2 (73 Stat. 490, Public Law 86-253).
6) Act of July 14, 1960, Sec. 7 (74 Stat. 504, 505, Public Law 86-648).

Permanent Laws

1) Act of September 26, 1961, Secs. 1-4 (75 Stat. 650, Public Law 87-301).
2) Act of October 3, 1965, Secs. 4 and 8(c) (79 Stat. 911, 915, 197, Public Law 89-236).
3) Act of December 16, 1975 (89 Stat. 824, Public Law 94-155).
4) Act of October 5, 1978 (92 Stat. 917, Public Law 95-417).
5) Act of December 29, 1981, Sec. 2(b) (Immigration and Nationality Act Amendments of 1981, 95 Stat. 1611, Public Law 97-116).

## Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:
47 FR 3757, Jan. 27, 1982, Sec. 238.3.
47 FR 5990, Feb. 9, 1982, Sec. 212.1(e).
47 FR 8005, Feb. 24, 1982, Sec. 212.1(e).
47 FR 8759, Mar. 2, 1982, Sec. 238.3.
47 FR 9982, Mar. 9, 1982, Sec. 238.4.
47 FR 10776, Mar. 12, 1982, Secs. 316a.21(d); 328.2 & 328.3; 332.11(a) & (b); 332a.2 & 332a.13(b); 334.2, 334.11 & 334.21; 335.11(a); 335b; 336.11, 336.16, 336.16a; 339.1; 344.3.
47 FR 12129, Mar. 2, 1982, Interim rule: Secs. 204.a(c)(7); 212.2, a new paragraph (a) is added, former paragraphs (a), (b), (c), (d), (e) and (f) are revised and redesignated as paragraphs (b), (c), (d), (e), (f) and (g), and remaining paragraphs (g), (h), (i) are redesignated as (h), (i) and (j); 212.7(b); 212.10; 214.2(j)(2)(ii) & 214.2(j)(3); 223.2; 223.4; 237.6; 242.8(a); 242.17(d) redesignated as paragraphs (e) and new paragraph (d) is added; 245.1(a), (b) and (c) revised, paragraphs (d) & (e) removed, paragraph (f) revised and redesignated (d), and remaining paragraphs (g) & (h) redesignated (e) & (f); 245.3; 248.2, 265.1.
47 FR 12939, Mar. 26, 1982, Sec. 238.3.
47 FR 16771, Apr. 20, 1982, Sec. 3.1(d)(1-a) & (e). ■

# An Analysis of the Efficiency Legislation

*The INS efficiency legislation, H.R. 4327, was signed into law on December 20, 1981. The new law entitled, "The Immigration and Nationality Act Amendments of 1981" (P.L. 97-116, 95 Stat. 1611), eliminates or modifies provisions of the Act which have proved unnecessary or impractical. Following is a section-by-section analysis of its provisions:*

*Section 2(a)* amends the nonimmigrant student provisions of section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)), by limiting "F" classification to academic students and creating a new subsection (M) defining nonacademic or vocational students. The Act retains language programs in the current "F" category. The provision is effective June 1, 1982, six months from the date of enactment of the Act, as provided by section 21(b)(1).

*Section 2(b)* amends sections 101(b)(1)(E) and (F) of the Immigration and Nationality Act, (8 U.S.C. 1101(a)(1)(E) and (F)), to raise the age for classification of foreign-born adopted children from 14 to 16 years of age.

*Section 2(c)* amends section 101(f) of the Immigration and Nationality Act, (8 U.S.C. 1101(f)), to eliminate adultery and conviction for a single offense of simple possession of 30 grams or less of marihuana as an absolute bar to a finding of "good moral character," which is a condition for naturalization and other immigration benefits. Although a person may still be found to lack good moral character because of adultery or simple possession of marihuana, such a finding is no longer mandatory.

*Section 3* amends section 204 of the Immigration and Nationality Act, (8 U.S.C. 1154), by eliminating subsection (d), which required a semimonthly report to Congress on each application approved for third preference (professional and aliens of exceptional ability) or sixth preference (skilled or unskilled worker) immigrant status. This section also corrects the duplicate designation of subsections 204(f) which resulted from the enactment of section 3 of P.L. 95-417.

*Section 4(1)* amends section 212(a)(17) of the Immigration and Nationality Act, (8 U.S.C. 1182(a)(17)), to remove the requirement that an alien, who was previously deported from the U.S. must obtain the approval of the Attorney General before entering the United States more than five years after the date of deportation or removal. The provision eliminates the need to adjudicate applications for aliens who have remained outside the United States for five years or longer after deportation.

*Section 4(2)* amends section 212(d)(6) of the Immigration and Nationality Act, (8 U.S.C. 1182(d)(6)), to eliminate the requirement that the Attorny General submit a detailed report to the Congress on each case in which the Attorney General exercises his discretionary authority under section 212(d)(3) to waive certain exclusions for aliens (who were previously convicted of certain crimes or are members of certain excludable classes) seeking to come temporarily to the United States.

*Section 4(3)* amends section 212(h) of the Immigration and Nationality Act, (8 U.S.C. 1182), to give discretionary authority to the Attorney General to waive exclusion based on simple possession of 30 grams or less of marihuana in the case of an alien spouse, parent, or child of a United States citizen or lawful permanent resident if the exclusion would result in extreme hardship to the citizen or resident alien and if admission would not be contrary to the national welfare, safety, or security. It is the same waiver as is available for other grounds of exclusion based on criminal conduct.

*Section 5(a)* amends section 212(a)(32) and section 212(j)(1)(B) of the Act to except from the medical examination requirements imposed by each of the sections those alien doctors who were fully and permanently licensed to practice medicine in a state on January 9, 1978 and practicing medicine in a State on that date. The amendment also repeals a third requirement for such exceptions prescribed by Section 601(a) of the Health Planning and Health Services Research and Statistics Extension Act of 1977 (Public Law 95-83), 91 Stat. 394, i.e., that the alien doctor must also have held on January 9, 1977 a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties.

*Section 5(b)(1)-(6)* amend section 212(j) of the INA to permit aliens coming to the United States to study in medical residency training programs to remain until the typical completion date of the program, rather than only for two years (plus a possible one-year extension) as provided in present law. In addition, the amendment permits the alien to change enrollment in programs once, within two years after coming to the United States. This change of program would require approval by the Director of the International Communication Agency (ICA) and further commitments from the alien to assure that, upon the completion of the program, the alien would return to his country. Each FMG who enters the U.S. under an exchange visitor program will be required to submit an affidavit to the Attorney General each year attesting to his good standing in the program and stating he will return to the country of his nationality or last residence upon completion of the program. The Congress shall receive annual reports from the Director of ICA on the persons in graduate medical education programs based on the submission of the affidavits (Section 5(b)(8)). Under section 5(c), these amendments would apply retroactively to aliens currently in the United States who were made subject to the two-year restriction under the amendment made by Public Law 94-484.

*Section 5(b)(7)* amends section 212(j) of the INA with respect to the waiver of requirements for certain alien physicians coming to the United States to participate in exchange training programs.

First, the amendment clarifies that a "substantial disruption waiver" may only be given with respect to the medical school affiliation requirement of section 212(j)(1)(A) and to the passage of the Visa Qualifying Examination (VQE) requirement, and not with respect to competency in oral and written English, ability to adapt to the educational and cultural en-

vironment of the program, or adequate prior education.

Second, the amendment extends the waiver authority which would otherwise have expired on December 31, 1981, to December 31, 1983.

Third, the amendment clarifies that requests for substantial disruption waivers are to be considered on a case-by-case basis by the Secretary of Health and Human Services, rather than granted on a blanket basis in accordance with general guidelines.

Fourth, the amendment requires that in order to obtain such a waiver, the training program must have a comprehensive plan to reduce its reliance on alien physicians, with satisfactory details in the plan relating to: (1) problems the programs would encounter without the waiver and how it intends to alleviate such problems, (2) changes which will be made in the program so that it will be more attractive to American medical graduates, (3) recruiting efforts the program has undertaken to attract American medical graduates, and (4) a year-by-year plan to reduce reliance on foreign medical graduates by December 31, 1983.

Fifth, the amendment requires the Secretary of Health and Human Services and the Attorney General to monitor the issuance of the waivers (and their impact on health care delivery in communities for which the waivers are in effect) to assure that the requirements described above are carried out and that proper care is being provided.

*Section 5(c)* makes the amendments relating to the duration of participation by aliens receiving graduate medical education or training in exchange visitor programs retroactive to January 10, 1978—the date on which the existing three year limit on participation in these programs first became applicable.

*Section 5(d)(1)* amends section 101(a)(27) of the INA to permit certain alien physicians (including alien physicians who are of national or international renown in the field of medicine) who are fully and permanently licensed and who have been practicing medicine in the United States since January 1978, to be treated as "special immigrants," and thus to become permanent residents without regard to numerical restrictions or labor certification. Brief, temporary trips abroad (e.g., to visit family) should not be construed to break the continuous presence or practice requirements for an alien to benefit under these provisions.

*Section5(d)(2)* clarifies that alien physicians who qualify under such provisions may adjust their status without regard to restrictions of section 245(c) of the INA (relating to unauthorized employment in the United States).

*Section 5(e)* provides for a report to Congress within two years by the Secretary of Health and Human Services, after consultation with the Attorney General, the Secretary of State, and the Director of the International Communication Agency, evaluating the value of graduate medical exchange programs to foreign countries and to the United States.

*Section 6* amends section 223(b) of the Act (8 U.S.C. 1203(b)) by prescribing that a reentry permit can be issued for up to two years, without extension. Under present law, permits are issued for an initial one-year period, and can be extended upon application for up to an additional year. Since 1957, aliens have been able to use alien registration receipt cards to effect reentry after absences of less than 1 year, and thus applications for reentry permits have been used almost exclusively when an alien anticipates an absence of more than 1 year. This amendment conforms the statute to reflect the present use of such permits (that is, to allow reentry after one year and before two years).

*Section 7* amends section 237 of the INA to provide that, aliens who are excluded from entry into the United States, but who cannot be returned to the country from whence they came, can be deported to other countries. This is currently the case only with respect to aliens who are being deported from the U.S. after proceedings conducted under section 242 of the Act. Present law does not provide this option for aliens who are removed from the United States following exclusionary proceedings under section 236. Present law requires an excluded alien to be removed only to the country "whence he came" to the United States. If this country does not recognize the alien's right to be returned (as may be the case of an alien who had resided temporarily in a foreign country not his home), there is no authority to return the alien to any other country, even the country of the alien's nationality or another country which is willing to accept the alien. This amendment provides the Attorney General with the same flexibility with respect to removal of aliens who are not permitted to enter the United States as it does, under section 243(a) of the Act, in the case of aliens who have entered the United States and are subsequently deported. It also eliminates the use of the confusing term "whence he came."

*Section 8* amends section 241(f) of the Act (8 U.S.C. 1251), to eliminate the mandatory waiver of deportation based on visa fraud or misrepresentation at the time of entry in the case of a spouse, parent, or child of a United States citizen or lawful permanent resident who is "otherwise admissible." The amendment replaces this with a discretionary waiver in the case of such an alien who possessed an immigrant visa or equivalent document at the time of entry and who is otherwise admissible except for the grounds specified in section 212(a)(14), (20), and (21) of the Act. The present law has been a major source of controversy and litigation for many years. The issue of the proper interpretation of this section has reached the Supreme Court twice with no clear resolution. Compare *INS* v. *Errico*, 385 U.S. 214 (1966), with *Reid* v. *INS*, 420 U.S. 619 (1975). The amendment reconciles the confusing and conflicting judicial and administrative interpretations of the scope of this provision, and clarifies that the waiver is intended only to apply to immigrants, and that it is available for innocent as well as fraudulent misrepresentations.

*Section 9* amends section 244(f) of the Immigration and Nationality Act (8 U.S.C. 1254(f)) to permit certain exchange visitors not subject to a requirement of returning to their home countries (or who have satisfied the requirement or had it waived) to apply for suspension of deportation. It prohibits foreign medical graduates who have entered the United States as exchange visitors from applying under this section, notwithstanding a waiver of the two-year residence requirement.

This section also eliminates a restriction on such suspension of deportation in the cases of natives of contiguous

countries and adjacent islands for which "nonquota" visas are otherwise available. The elimination of this latter restriction is basically a conforming amendment, since the restriction has had no legal effect since the enactment of the Immigration and Nationality Act Amendments of 1976 (Public Law 94-571), which became effective January 1, 1977.

*Section 10* amends section 248 of the Act (8 U.S.C. 1258) to allow alien exchange visitors classified under section 101(a)(15)(J) who are not subject to the two-year foreign residence requirement of section 212(e) to apply for change of nonimmigrant status. Exchange visitors, who come to the United States to participate in a variety of exchange programs for technical, educational, cultural, or research purposes, are classified as nonimmigrant aliens under section 101(a)(15)(J) of the Act. Prior to 1970, the provisions of section 212(e) of the Act prevented all exchange visitors classified under section 101(a)(15)(J) from applying for permanent residence in the United States unless they first returned to their country of origin for two years. In 1961, section 248 of the Act was amended to prevent "J" aliens from changing nonimmigrant classifications and then applying for permanent residence. However, this prohibition against changing nonimmigrant status has proven unnecessarily broad, since section 212(e) has been amended to reduce the class of "J" aliens subject to the two-year residence requirement. This amendment brings the sections into conformity. This section also amends section 248 to prohibit the change of nonimmigrant status by fiancee or fiance ("K") nonimmigrants. An alien entering under this status must leave the United States if the marriage does not occur within 90 days. A "J" nonimmigrant who came to the United States or acquired such classification in order to receive graduate medical education or training is absolutely barred from changing nonimmigrant status, notwithstanding the fact that the alien may be eligible for a waiver of the foreign residency requirement.

*Section 11* amends section 265 of the Act, (8 U.S.C. 1305), to eliminate the annual registration requirement for permanent resident aliens. The amendment retains the existing requirement that those aliens otherwise required to register must notify the Attorney General in writing of a change of address within 10 days of change. The Attorney General may require registration in situations where he deems it necessary upon ten days notice.

*Section 12* amends section 274(b) (8 U.S.C. 1324(b)) to bring INS forefeiture law and procedures into conformity with those of other enforcement agencies by removing the "innocent owner" seizure exemption currently contained in the Act. INS will now be merely required to show probable cause that the conveyance seized has been used to illegally transport aliens in violation of section 274(a) of the Act. Once probable cause has been demonstrated, the burden of proof shifts to the owner/claimant to show by a preponderance of the evidence that the seized conveyance was not used illegally, in order to avoid forefeiture. Although not stated specifically in the amendment to section 274(b), under the House Report accompanying the Act, Report No. 917-264, at page 28 (H.R. REP. No. 264, 97th CONG., 1st Sess, 28 (1981)1, INS is required to promulgate regulations which will (1) require its officers to make a good faith inquiry to ascertain ownership of a seized conveyance; (2) insure timely and effective notice to the owner and other with a financial interest in the conveyance; and (3) afford the owner an opportunity (prior to the institution of forefeiture proceedings) to show that he was not involved in criminal activity. The present 72-hour notice provisions meet these requirements.

The amendment also relieves INS of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided INS had probable cause for the original seizure. The requirement that INS satisfy any valid lien or third party interest in the conveyance "without expense to the interest holder" is also removed by the amendment. The amendment allows the lienholder's interest to be satisfied only after INS' costs associated with the seizure have been deducted.

The amendment also provides that the Attorney General may retain, sell, or require the GSA to sell, any forfeited conveyances.

*Section 13* amends section 286 of the INA (8 U.S.C. 1356) to enable the INS to recoup appropriated funds spent for the purchase of evidence, when such funds are later recovered.

*Section 14* amends section 316(b) of the INA to extend to the spouse and unmarried dependent children of employees of the United States, U.S. firms, or international organizations, the exemption that such employees have under current law from the requirement that, in determining continuity of residence for purposes of naturalization, absence from the United States for more than one year breaks the continuity. This provides the spouse and children of a lawful permanent resident alien whose employment has required the alien to be abroad with the same treatment as the principal alien for purposes of preventing a break in the period of continous residence required for naturalization.

*Section 15* amends section 329(b), 334(a), 335, 336, and 328(b)(2) of the INA to eliminate the requirement that two U.S. citizen witnesses submit affidavits and testify during naturalization proceedings attesting to the moral character and background of an applicant for naturalization. In addition, this section eliminates the need to wait 30 days after filing of a petition for naturalization before a certificate may be issued.

*Section 16* amends section 344(c) of the Act, (8 U.S.C. 1455(c)), to permit state courts with jurisdiction to naturalize aliens to retain one-half of the naturalization fees collected in each fiscal year up to $20,000, rather than the present one-half of such fees up to $3,000. This increase is necessary to assure that these courts do not withdraw from the naturalization process.

*Section 17* amends section 13 of the Act of September 11, 1957 (71 Stat. 642), to restrict the circumstances under which the Attorney General may grant permanent resident status to aliens admitted under section 101(a) (15)A(i) or (ii) or 101(a)(15)(G)(i) or (ii) not to exceed 50 in any fiscal year (subject to Congressional disapproval). Under the amendment the status of such aliens may not be adjusted unless the alien shows compelling reasons demonstrating *both* that: (1) the alien is unable to return to his country of accreditation and (2) the adjustment would be in the national interest.

*Section 18* contains miscellaneous technical and conforming amendments.

*Section 18(a)* changes the reference in section 101(a)(15)(F) of the INA from the former "Office of Education" to the "Secretary of Education" (established under the Department of Education Organization Act, Public Law 96-88); corrects stylistic, typographical inconsistencies in section 101(a)(15) and 101(b)(1) of the Act which have occurred because of the inconsistent style of previous amendments to those sections; and omits a sentence which concerns provisions (sections 350 and 352 of the Act) which were repealed by Public Law 95-432.

*Section 18(b)* corrects a typographical error in section 106(a)(1) of the Act (75 Stat. 651).

*Section 18(c)* corrects an omission in section 202(b) of the Act as amended by P.L. 89-236 (79 Stat. 912).

*Section 18(d)* makes a minor wording change in section 204(a) of the Act.

*Section 18(e)* corrects a typographical omission in subsection (a)(32) of section 212 of the Act, and adds a new subsection (k) to section 212 of the Act to authorize the Attorney General to waive certain technical defects in immigrant visas which are not the fault of the alien involved. Before 1965, similar authority was contained in section 211(c) of the Act, but was apparently inadvertently dropped when the Act was amended in 1965. The lack of authority to waive technical defects in immigrant visas has caused hardships in some cases.

*Section 18(f)* corrects a typographical error in section 221(a) of the Act caused by the wording of section 11(a) of Public Law 89-236 (79 Stat. 918).

*Section 18(g)* corrects a grammatical error in section 231(d) of the Act.

*Section 18(h)* clarifies in sections 242(b), 242(e), and 244(a) of the Act the inapplicability of suspension of deportation and voluntary departure provisions to aliens who have participated in the Nazis' persecution of others. This conforms these provisions to the strict policies reflected in title I of Public Law 95-549.

*Section 18(i)* corrects a punctuation error in section 243(a) of the Act.

*Section 18(j)* corrects terminology and references in section 244(d) of the Act. There no longer are nonpreference immigrant visas generally available from which a numerical reduction can be made, and the authorization for issuance of immigrant visas is under section 201(a) and 202(a) and not under section 203(a)(7).

*Section 18(k)* corrects references to "quota" and "nonquota" immigrants in section 291 and 349(a) of the Act, made obsolete by changes made by Public Law 89-236.

*Section 18(l)* corrects section references in section 309(a) and (b) of the Act, required to conform to changes made in section 301 of the Act by Public Law 95-432.

*Section 18(m)* clarifies redundant language dealing with naturalization of adopted children in sections 320(b), 321(b), and 322(b) of the Act. Prior to Public Law 95-417, the subsections (b) contained in sections 320, 321, and 322, specifically provided that the naturalization procedures available under these sections would not apply to adopted children. Rather, adopted children would be naturalized under the provisions of section 323, which required a two-year residence in the United States. When section 323 was repealed (by section 7 of Public Law 95-417), the language in these subsection (b)'s was changed to reflect that these sections would now apply. The technical change made by the amendment by this section clarifies that the requirements of sections 320(b), 321(b), and 322(b) are in addition to those specified in section 101(b)(1)(E) and (F) for an adopted child to be treated as a child under those provisions.

*Section 18(n)* effectively reinstates a provision of law (subsection (c) of section 323 of the Act) which was inadvertently repealed when section 323 of the Act was repealed by section 7 of Public Law 95-417. This would avoid unnecessary delays in the naturalization of children who are adopted abroad by U.S. citizens who are being employed abroad in an official capacity, and would permit naturalization of these children in a manner similar to naturalization of alien spouses, under section 319(b) of the Act. This new section is designated as section 322(c).

*Section 18(o)* deletes the reference in section 337(a) of the Act to section 323 of the Act, which was repealed by section 7 of Public Law 95-417.

*Section 18(p)* corrects section references in section 341 of the Act to provisions of section 301 of the Act, which were redesignated by section 3 of Public Law 95-432.

*Section 18(q)* corrects a typographical error in section 349 of the Act introduced by section 4 of Public Law 95-432. The original Act contained the proper designation (see 66 Stat. 235), though at least one previous printing of a compilation of the Immigration and Nationality Act prepared by the House Judiciary Committee inadvertently omitted it.

*Section 18(r)* corrects section references in section 351 of the Act to provisions of section 349 of the Act, which were renumbered by Section 4 of Public Law 95-432.

*Section 18(s)* clarifies that the general authorization of appropriation provision contained in section 404 of the Immigration and Nationality Act was not intended to provide open-ended authorizations for the refugee assistance provisions added as chapter 2 of title IV of the Act by the Refugee Act of 1980 (Public Law 96-212). Section 414 of that chapter has a specific three-year authorization of appropriations for programs contained in that chapter.

*Section 18(t)* corrects the table of contents of the Act to reflect repeal of section 345 of the Act by section 12(c) of Public Law 86-682 (74 Stat. 728) and of sections 350, 352, 353, 354, and 355 of the Act by the first section and section 2 of Public Law 95-432.

*Section 18(u)* corrects a reference in 18 U.S.C. 1429 to subsection (e) of section 336 of the Act, which has been redesignated as subsection (d) by section 15(d)(4) of this Act. It also corrects a reference in the Act of March 16, 1956, to a paragraph in section 301 of the Act which was renumbered by section 3 of Public Law 95-432.

*Section 19* provides that numerical limitations on immigrant visas available will not apply to aliens in the United States and seeking adjustment of status if they, on or before June 1, 1978 (the last date nonpreference immigrant visas numbers were available), (1) had applied for such adjustment, (2) were

qualified as nonpreference immigrant, and (3) were determined to be exempt from labor certification because of their actual investment in a business in the United States in which the alien was one of the principal managers. Recent changes in the immigration law, (e.g., Public Laws 95-571 and 95-412) had the effect of allowing a more systematic and uniform flow of immigration but, at the same time, because of the heavy worldwide demand for visas in the first six preferences, there were no visa numbers available to those seeking to immigrate as nonpreference applicants. The beneficiaries of this section had applied for adjustment of status based on their investor status before nonpreference numbers became unavailable and INS has allowed them to remain in the United States to await availability of an immigrant visa.

*Section 20* provides that when adjustments of status by foreign medical graduates (section 5(d)(1)) and investors (section 14) counted together with all other visas issued under the numerical limitations of a fiscal year, exceed 270,000, the Secretary of State shall reduce the visas available by that same number in the following fiscal year. This section also provides for similar reductions in the per country limitations for subsequent years.

*Section 21* makes the provision of the Act effective upon date of enactment, except for the provisions of section 2(a) and section 16. ■

## ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50 per year, $12 extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.)**

**Number 2885-Matter of De La Nues. In Exclusion Proceedings, A-23224173. Decided by BIA, Oct. 5, 1981.**

(1) Conduct underlying a foreign conviction which constitutes an act of juvenile delinquency under United States standards, however treated by the foreign court, is not a crime for purposes of the Immigration and Nationality Act and accordingly may not serve as the basis of a finding of excludability under section 212(a)(9) of the Act, 8 U.S.C. 1182(a)(9).

(2) Applying the Federal Juvenile Delinquency Act (FJDA) as the benchmark of United States standards, an act which would be a crime if committed by an adult is an act of juvenile delinquency where perpetrated by a youth between 16 and 18 years of age unless the act complained of, if committed by an adult, would be a felony punishable by a maximum penalty of 10 years imprisonment or more, life imprisonment, or death; under those circumstances, the Attorney General may move to transfer the case for criminal prosecution. 18 U.S.C. 5032. *Matter of A-*, 5 I&N Dec. 639 (BIA 1954), modified.

(3) In determining whether a foreign offense would make a juvenile liable to possible criminal prosecution under United States standards by virtue of the penalty involved, the offense is examined in light of the maximum punishment imposable for an equivalent crime described in the United States Code or, if an equivalent crime is not found there, in the District of Columbia Code.

(4) Inasmuch as each crime equivalent to the applicant's offenses *(see* sections 22-1801(b) and 22-2205, District of Columbia Code, defining second degree burglary and receipt of stolen goods respectively) carries a maximum penalty of 10 years imprisonment or longer, it may not be said that one charged with the commission of either offense while over the age of 16 years is entitled as a matter of law to treatment as a juvenile delinquent and therefore it is incumbent upon the applicant, who committed his offenses at 16 and 17 years of age, to establish that he was in fact dealt with as a juvenile delinquent in Cuba under a system of treatment substantially similar to the FJDA.

(5) The applicant was given a determinate prison sentence in Cuba extending beyond his minority and therefore has not established that he was treated as a juvenile delinquent under a system comparable to our own and must be considered to have been convicted of a crime. *Compare* 18 U.S.C. 5037(b).

(6) The applicant's burglary offense is a crime involving moral turpitude notwithstanding the fact that the offense may have been motivated by economic hardship.

(7) the juvenile offender exception to section 212(a)(9), available to a qualifying youthful offender even though he is deemed to have been convicted of a crime involving moral turpitude rather than adjudicated a juvenile delinquent under United States standards, does not apply to the applicant as fewer than 5 years have elapsed since his release from confinement.

**Number 2886-Matter of Onal, In Section 246 Proceedings, A-20058053. Decided by BIA, Oct. 15, 1981.**

(1) Where alien respondent's labor certification was invalidated by the Department of Labor under the applicable federal regulations, rescission of the respondent's adjustment of status as a nonpreference immigrant—which was based upon the validity of that labor certification—is mandated by section 246 of the Immigration and Nationality Act, 8 U.S.C. 1256.

(2) Where the Immigration and Naturalization Service instituted rescission proceedings against the respondent within the statutory 5 year period after his adjustment of status occurred, the subsequent delay in holding the rescission hearing was not shown to be unreasonable or prejudicial, nor is it the

type of delay against which the doctrine of estoppel by laches will protect.

**Number 2887-Matter of Ho. In Visa Petition Proceedings, A-22952934. Decided by BIA, Oct. 6, 1981.**

(1) The People's Republic of China has not promulgated statutes presenting procedural requirements for the establishment of adoption.

(2) There are no known requirements that an adoption, or any written agreement involved, be examined or approved by an agency or official of the government of the People's Republic of China in order to validate an adoption in that country. *Matter of Yee*, 14 I&N Dec. 132 (BIA 1972), clarified.

(3) The procedure for effecting adoptions in the People's Republic of China has not been adequately spelled out in court decisions and other legal writings. *Matter of Yee*, 14 I&N Dec. 132 (BIA 1972), modified.

(4) Where the record in visa petition proceedings provides insufficient evidence of what was required to create a recognized and valid adoption in the People's Republic of China in 1958, and where the petitioner has not provided sufficient evidence to meet the requirements of section 101(b))1)(E) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(E), the record is remanded for further proceedings.

**Number 2888-Matter of Frigon. In Visa Petition Proceedings, Hou-N-10770. Decided by Commissioner, Sept. 17, 1981.**

(1) Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii), defines a nonimmigrant alien trainee as an alien having a residence in a foreign country which he has no intention of abandoning and who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training.

(2) 8 C.F.R. 214.2(h)(4) provides that a trainee shall not be permitted to engage in productive employment if such employment will displace a United States resident and, while not prescribing specific requirements, lists a number of informational factors which a petitioner must furnish and which a Service District Director must consider.

(3) Other criteria for qualifying for H-3 nonimmigrant visa classification: Existence of an actual training program, *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (R.C. 1972); training program must not be for the purpose of recruiting and training aliens for the staffing of United States firms, *Matter of Glencoe Press*, 11 I&N Dec. 764 (R.C. 1966); training must be purposeful and not just incidental to productive employment, *Matter of Sasano*, 11 I&N Dec. 363 (R.C. 1965); and, repetition, review, and practical application of skills alone do not constitute a training program, *Matter of Masauyama*, 11 I&N Dec. 157 (Actg. R.C. 1965).

**Number 2889-Matter of Thompson. In Visa Petition Proceedings, ALB-N-4445. Decided by Commissioner, Aug. 11, 1981.**

(1) Dissolution of a foreign business or cessation of foreign business activity by the petitioner would not preclude an alien beneficiary from being accorded status as an intra-company transferee since section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L), only requires the employment of the beneficiary outside of the United States by the foreign firm or other legal entity for one year prior to entry.

(2) The existence of a foreign employer or a foreign office of the United States employer is not required. *Matter of Chartier*, 16 I&N Dec. 284 (BIA 1977) followed.

**Number 2890-Matter of Vea. In Bond Proceedings, A21 314 945. Decided by BIA, Nov. 4, 1981.**

(1) After an initial custody determination has been made by a District Director or other specified officer of the Immigration and Naturalization Service authorized to issue a warrant of arrest, an alien may apply to the foregoing officials for release or amelioration of the conditions of release. 8 C.F.R. 242.2(a).

(2) Once service of a warrant of arrest or determination of any application pertaining thereto has been made by a District Director or other specified Service officer, the alien may apply to an immigration judge for change in custody status at any time before a deportation order becomes administratively final, but if an alien is released from custody, such application must be made to an immigration judge within 7 days from the date of release; thereafter, the application can only be made to a District Director. 8 C.F.R. 242.2(a) and (b).

(3) Direct appeal to the Board of Immigration Appeals from a custody determination of a District Director or other designated Service officer is authorized only after a deportation order becomes administratively final or where recourse to an immigration judge is no longer available because of the expiration of the 7-day period. 8 C.F.R. 242.2(a) and (b).

(4) Where the respondent was still in detention at the time he applied for a change in custody status and no final order of deportation had yet been entered in his case, his application was properly considered by an immigration judge; his recourse thereafter lay in an appeal to the Board, filed within 5 days of the date written notification of the immigration judge's determination is served upon the parties, and not in a request for amelioration to a District Director. 8 C.F.R. 242.2(b).

**Number 2891-Matter of SIO. In Bond Proceedings, A23 110 685. Decided by BIA, Nov. 4, 1981.**

(1) A immigration judge has authority to consider an application for release or amelioration of the conditions of release from custody after an initial determination with respect to custody has been made by a District Durector or other specified officer of the Immigration and Naturalization Service and at any time before a deportation order becomes administratively final, but if an alien is released from custody, such application must be made to an immigration judge within 7 days from the date of release; thereafter, the application may only be made to a District Director. 8 C.F.R. 242.2(b).

(2) Where the respondent did not avail himself of his regulatory right to submit an application for change in custody status to an immigration judge before

the expiration of the 7-day period, jurisdiction over the application rested with the District Director and recourse from the District Director's decision lay in an appeal to the Board of Immigration Appeals, filed within 5 days after service of written notification of that decision. 8 C.F.R. 242.2(a) and (b).

**Number 2892-Matter of Alphonse et al. In Exclusion Proceedings, A26 006 595. Decided by BIA, Nov. 17, 1981.**

(1) An immigration judge lacks jurisdiction to consider a motion for a change of venue where an alien is detained by the Immigration and Naturalization Service pending exclusion proceedings notwithstanding the provision in 8 C.F.R. 236.1 granting immigration judges the power to take such actions "as is appropriate and necessary for the disposition of such cases." *Matter of Wadas*, Interim Dcision 2785 (BIA 1980) distinguished.

(2) A change of venue issue may not be reviewed by an immigration judge in exclusion proceedings in the case of a detained alien because such a review would necessarily involve consideration of parole and detention matters which are exclusively within the jurisdictional powers of the District Director. 8 C.F.R. 212.5(a), 233.1 and 235.3.

**Number 2893-Matter of Jimenez. In Visa Petition Proceedings, A-22175309. Decided by BIA, Dec. 22, 1981.**

(1) Pursuant to the provisions of Chapter IV, Article 30, of the Civil Code of the Dominican Republic, in a divorce action by mutual consent, native Dominican spouses, whether residing in the Dominican Republic or not, are not required to make a personal court appearance in order to obtain a divorce. Where inconsistent, *Matter of Guzman*, 15 I&N Dec. 624 (BIA 1976), is overruled.

(2) Pursuant to Article 28, Par. V of the Civil Code of the Dominican Republic, which governs the conduct of foreigners seeking to obtain a divorce by mutual consent, only one spouse is required to make a personal appearance in order to obtain a valid divorce in the Dominican Republic.

**Number 2894-Matter of M/V "Solemn Judge." In Fine Proceedings, MIA 10/12.1785. Decided by BIA, Jan. 21, 1982.**

(1) In the absence of a showing of "affirmative misconduct" on the part of a government agent, the Board of Immigration Appeals decided not to meet the issue of whether the doctrine of estoppel can be applied against the government; "affirmative misconduct" was not shown by the fact that former President Jimmy Carter issued Presidential Determination No. 80-16 on April 14, 1980, or his "open hearts and open arms" speech on May 5, 1980; likewise, "affirmative misconduct" was not demonstrated by the absence of a warning to the carrier by the United States Customs Service concerning the subject of administrative fines for bringing undocumented aliens to the United States or by the fact that the Customs Service issued the carrier clearance to travel to Cuba.

(2) The Attorney General has delegated to the Commissioner of the Immigration and Naturalization Service the authority to enforce the provisions of the Immigration and Nationality Act and the Commissioner, through his delegate, the District Director, properly exercised that authority under the provisions of section 273(b) of the Act.

(3) The carrier became liable to fines under the provisions of section 273 of the Act by transporting undocumented alien passengers to the United States and, therefore, cannot claim examption from liability merely by delivering his passengers to the Immigration and Naturalization Service for inspection upon arrival in the United States.

(4) The failure of the Immigration and Naturalization Service to respond to the request of the carrier to provide him with addresses of the undocumented alien passengers that he brought to the United States is not a denial of due process of law.

(5) The District Director's decision to impose or not to impose fines for violations of section 273 of the Act involves the exercise of prosecutorial discretion which is not reviewable by the Board of Immigration Appeals.

(6) Remission of fines under section 273(c) of the Act is not warranted because the carrier failed to exercise reasonable diligence in ascertaining and complying with the requirements of the law for bringing alien passengers to the United States.

(7) The defense of duress is not available to the carrier seeking remission of fines under section 273(c) of the Act for the reasons that his objective in bringing immigrants to the United States who did not have proper documentation was contrary to the law; that his action in doing so was not prudent; and that he, in effect, usurped the authority of the Attorney General by precluding the government from screening those immigrants who were inadmissible under United States law.

**Number 2895-Matter of Hann. In Visa Petition Proceedings, A-21504220. Decided by BIA, Feb. 3, 1982.**

(1) The law of the Dominican Republic does not preclude a nonresident from obtaining a divorce for cause in the Dominican Republic.

(2) Article 17 of the Law on Divorce 1306-bis, Civil Code of the Dominican Republic, does not require the party who obtains a divorce for cause to appear "in person" to have the divorce pronounced and registered. *Matter of Valerio*, 15 I&N Dec. 659 (BIA 1976); *Matter of Gonzalez*, 16 I&N Dec. 178 (BIA 1977); and *Matter of Lucero*, 16 I&N Dec. 674 (BIA 1979), modified.

(3) The visa petition was properly denied on the ground that the petitioner's marriage to the beneficiary is invalid, *i.e.*, at the time it was entered into, the petitioner's divorce had not yet become final and he was not free to contract another marriage. ■

30/4

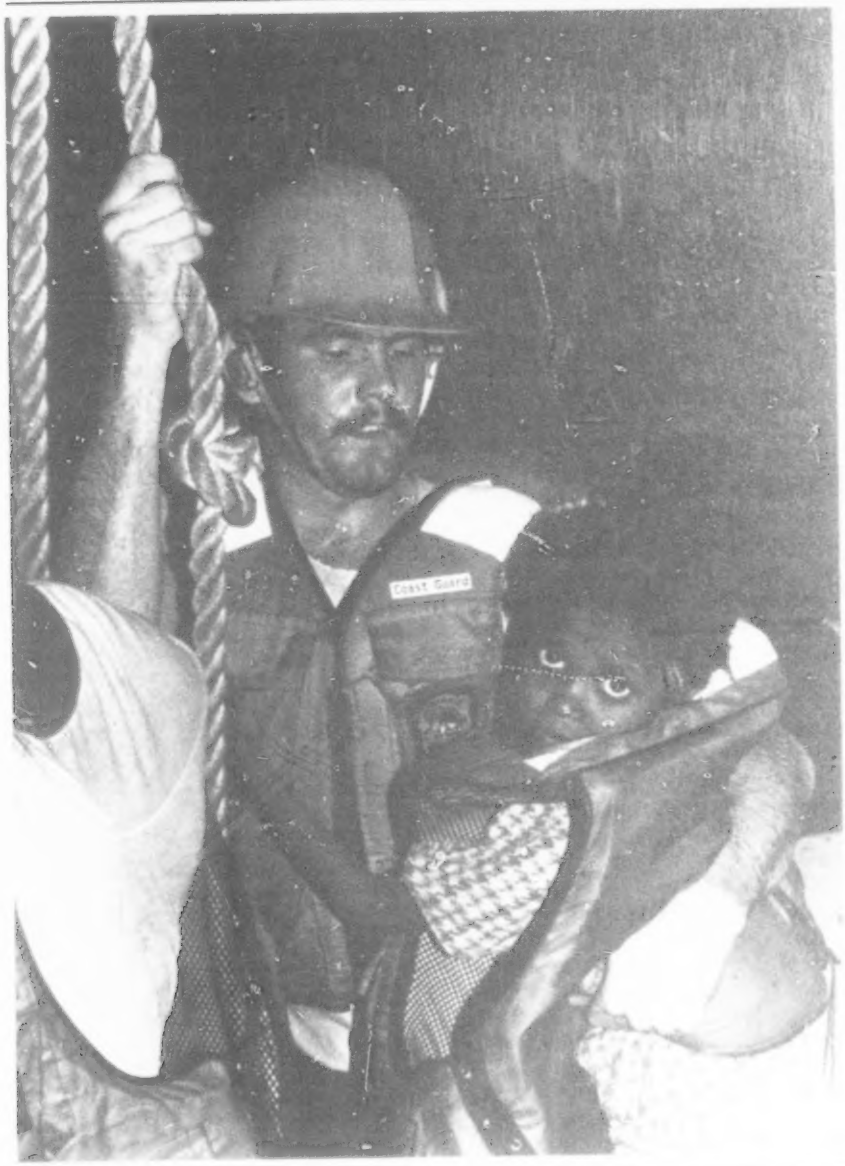
NEWARK PUBLIC LIBRARY

SEP 2 9 1982

U. S. GOVT. PUBS.
DEPOSITORY 376

# INS Reporter

Immigration and Naturalization U.S. Department of Justice Summer 1982




Project Jobs

The Interdiction Program

Alien Smuggling and the Vehicle Seizure Law

J21.10/2:

# INS Reporter

*Summer 1982*

**United States Department of Justice**
William French Smith, *Attorney General*

**Immigration and Naturalization Service**
Alan C. Nelson, *Commissioner*

## Contents

Volume 30, No. 4

Project Jobs 1

The Interdiction Program 3

Alien Smuggling and the Vehicle Seizure Law 7

Changes in the Regulations 11

Administrative Decisions 11

**Immigration and Naturalization Service**

Doris M. Meissner
*Acting Deputy Commissioner*

Perry A. Rivkind
*Acting Associate Commissioner*
*Management*

Joseph F. Salgado
*Associate Commissioner*
*Enforcement*

Andrew J. Carmichael, Jr.
*Associate Commissioner*
*Examinations*

Robert A. Kane
*Associate Commissioner*
*Operations Support*

James A. Kennedy
*Acting Comptroller*

Harry A. Scarr
*Acting Associate Commissioner*
*Planning & Evaluation*

Maurice C. Inman, Jr.
*General Counsel*

Janet R. Graham
*Editor*

**Cover:** With the anxiety and concern evident in her expression, a Haitian child is helped to safety by a Coast Guard seaman, shortly before the vessel in which she and 55 others were traveling sank. Crossing 500 miles of open sea, frequently in unseaworthy and dangerously overloaded vessels, is extremely perilous and can end in tragedy. The Government's interdiction program has sought not only to deter attempts by Haitians to come to the U.S. unlawfully but, more importantly, to prevent the loss of lives from the hazardous voyage.

*The opinions expressed are those of the authors and do not necessarily reflect the views or policies of the Immigration and Naturalization Service.*

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by this Agency.

For sale by Superintendent of Documents.

# PROJECT JOBS

By Richard E. Norton[1]
*Deputy District Director*
*San Antonio, Texas*
and
Robert J. Walsh[1]
*Assistant Chief for Investigations*
*Central Office*

During the week of April 26-30, 1982, more than 400 INS Investigators and Border Patrol Agents conducted specialized area control operations at nine locations throughout the United States. The operation, known as "Project Jobs", was a practical reaffirmation of long-standing Service policy of directing enforcement efforts toward locating illegal aliens in the United States at places of employment.

It also served to demonstrate a firm commitment by INS to a critical agency mission which in recent years had been adversely affected by personnel reductions and by a number of unforeseen emergency programs. Such programs included the Iranian Student Registration Program stemming from the Iranian hostage situation; the unexpected Cuban boatlift; and restrictions to area control operations during the 1980 Census.

For these reasons, apprehensions of illegal aliens by Service investigators dropped from approximately 185,000 during Fiscal Year 1979 to 105,000 in FY 1980, and to 93,000 for FY 1981; a decrease of nearly 50 percent between 1979 and 1981. Although Project Jobs was conducted more than a year after normal procedures were restored, the operation, together with a proportionate increase in investigative resources allocated for area control, was the first clear indication to the public as well as to other law enforcement agencies that the Service was again vigorously pursuing its interior enforcement mission.

**Planning the Project**

Project Jobs was conceived in early February by Joseph F. Salgado, newly appointed Associate Commissioner for Enforcement, and was several months in the planning. The premise for the project was to conduct area control operations which were consistent with existing guidelines, and to take the additional step of ensuring that jobs vacated by apprehended illegal aliens were filled by eligible unemployed United States workers. In early March, the four Associate Regional Commissioners for Enforcement met at the Central Office to preliminarily discuss and plan the logistical and operational aspects of the project.

To ensure maximum success, the Associates, together with Central Office Enforcement personnel, selected prospective target sites based on several criteria, as follows:

a) the number of leads reporting the presence of large concentrations of employed illegal aliens;

b) the success of area control operations in the past at particular sites;

c) the probability of aliens in high-paying jobs;

d) the availability of detention facilities; and

e) the extent of unemployment in the various locations.

With these concerns in mind, nine district offices were ultimately chosen to participate: New York and Newark in the Eastern Region; Chicago, Denver, and Detroit in the Northern Region; Dallas and Houston in the Southern Region; and Los Angeles and San Francisco in the Western Region. Meanwhile, contact with the Department of Labor was initiated to begin planning the job referral process.

By March 26, guidelines were furnished to all participating field offices. Thus began a month-long process on the local level of targeting employers, conducting surveillance and developing informants to establish probable cause for search warrant (if necessary).

In addition, field officers began eliciting the cooperation of the U.S. Attorney's Office at each location, establishing liaison with the various state employment services (which are regulated and funded by the Department of Labor), and solving local problems such as setting up processing facilities and expanding detention capabilities.

To minimize the possibility of unfounded allegations being brought against INS and to insure that information was furnished quickly and accurately to all persons involved in the Project, provisions were made for supervisors to be present during all field operations, and for the regions to provide on-site coordinators who were to report all relevant developments directly to the Central Office. Additionally, a media contact was designated at each district to ensure prompt and accurate information was made available to news sources.

One week prior to the starting date of the project, the participating offices compiled a list of approximately 300 targeted employers. To assist the state employment agencies with their role in referring unemployed United States citizens and residents to the vacated positions, five of the districts conducted trial runs at sites known to employ illegals in attractive jobs. A review of the target sites, combined with the success of the trial runs, indicated the planning process was complete, and the project was ready to begin.

**Media Coverage**

By the end of the first day of Project Jobs, over 1,250 employed aliens had been located throughout the nine cities. At the same time, it was apparent that the one aspect over which the Service had minimal control—media coverage—was going to have a multifaceted effect on the week's operations.

[1]Messrs. Norton and Walsh were coordinators for Project Jobs working with field offices on the daily operations of the program and assisting in resolving any problems.

Alerted by speculation in the press on the weekend before the project, all three major television networks carried prime-time stories on the day's events. The resultant clamor in each of the nine sites buried district officials with press inquiries, as some offices had to handle dozens of calls each day seeking information on the project. At some locations, press stories had the effect of reducing initial apprehension estimates. For example, Chicago; Newark; Detroit; Los Angeles and San Francisco reported significant no-show rates at factories where management correctly guessed they would be targeted. Media coverage also subjected some actual field operations to intense scrutiny by the press, including instances in Los Angeles and San Francisco where reporters tried to follow officers to the work sites.

Not all the consequences of media coverage were negative, however. While publicity on apprehensions at the various employment sites undercut the time-consuming referral process expected to be performed by state agencies, it also had the affect of generating an unprecedented overnight demand for jobs by unemployed citizens and lawful residents. One frequently cited instance in Los Angeles showed 1,000 people applying for 82 jobs at a plumbing factory; in Chicago, over 1,500 appeared for 161 positions with four employers; and in Dallas, three major employers filled 244 jobs within a day or two of Service operations.

All districts reported a significant increase in the number of area control leads received from a public suddenly aware of INS enforcement programs. Despite largely negative reporting in the cities of Denver, Los Angeles and San Francisco, four opinion polls conducted in those areas indicated public support for the project to be between 70 and 80 percent favorable.

United States Department of Justice
Immigration and Naturalization Service
Washington, D.C.

**PROJECT JOBS (APRIL 28-30, 1982)**

| CITY | EMPL APPREHENSIONS | REFERRALS | AVG WAGES/HR |
|---|---|---|---|
| Chicago | 1296 | 1295 | 4.91 |
| Dallas | 263 | 884 | 4.80 |
| Denver | 284 | 911 | 5.04 |
| Detroit [1] | 28 | 31 | 5.50 |
| Houston | 1080 | 695 | 4.74 |
| Los Angeles | 500 | 690 | 4.92 |
| Newark [2] | 168 | 157 | 4.54 |
| New York City [2] | 550 | 556 | 4.37 |
| San Francisco | 436 | 438 | 5.19 |
| Totals | 5440 | 5666 | 4.91 |

[1] Reflects apprehensions for a 3-day period
[2] Reflects apprehensions for a 4-day period.

## Apprehensions

As shown in the accompanying chart, apprehensions of employed illegal aliens totaled 5,440 for the week, substantially above the original projection of 5,000. By the Monday following completion of field operations, 72 percent or 4,071 of those apprehended had already been removed from the United States. To reduce the likelihood of those aliens returning to job sites and undermining the referral process, coordinated traffic checks were set up at Border Patrol Sectors through which the Mexican nationals were repatriated.

The Chicago office led the project in number of aliens located with 1,319 or 23 percent of the total. Dallas participated in the largest single operation, where 170 illegals were removed from a mobile home manufacturer. Los Angeles conducted operations with the highest average number of arrests per site, as that office visited only twelve employers to apprehend 800 aliens. It is notable that Denver, Detroit and San Francisco all reported average wages of the aliens to be over $5.00 per hour, and that the Southern Region sites accounted for 37 percent of all apprehensions. Also, at least half of the aliens apprehended were found in cities more than 400 miles from the U.S./Mexico border.

## Non-Mexicans Apprehended

Careful planning and targeting of employment sites not only resulted in large numbers of apprehensions, but also reflected some departure from the usual patterns experienced in area control operations. For example, it is interesting to note that concentrations of aliens from countries other than Mexico occurred not only at Eastern Region sites, but also in Houston, Texas, a city that critics pointed to as evidence that the Service was unduly stressing the apprehension of Mexican nationals. The stress, of course, was on locating illegal aliens employed in high-paying jobs; not on whether they were Mexican.

The combined totals of non-Mexican apprehensions in Houston, New York and Newark, numbered 524 and accounted for 70 percent of the nationwide total. Although 87 percent of the total apprehensions were Mexican, aliens from 44 different countries were located in jobs in the nine participating districts. It should be pointed out that since more than 95 percent of all apprehensions in FY 1981 were Mexican, and since historically apprehensions of this nationality group far exceeds all others, any effort to remove illegal aliens from jobs in the U.S., will result in the location of a substantial number of Mexicans. This is supported by INS apprehension figures for the past 10 years.

**Wage Patterns**

The increase in non-Mexican apprehensions was not the only departure from the usual patterns. It was found that wage patterns were also significantly different. Typically, about half of the apprehensions by Service investigators fall in the "industry" categories of employment, and an additional 40 percent in the "service" and "agriculture" categories. For Project Jobs, however, nearly 80 percent of the aliens located were found in industrial jobs, while only 14 percent were found in service and agriculture. Less than two percent of the aliens were earning under the minimum wage, compared to 14 percent in FY 1981.

Virtually all sites reported examples of aliens employed not only in entry-level factory work, but also in much higher paying jobs; well above national averages. In Chicago, railroad workers were found earning about $21,000 per year, and auto parts assemblers making $9.00 per hour. Denver reported construction workers making nearly $10.00 per hour and meat packers collecting $15,000 per year for their efforts. The average wage of the apprehended aliens was $4.81 per hour which represents more than $50 million in annual salaries paid to the 5,440 illegal aliens located during the project.

**End Results**

From virtually all perspectives pertinent to the Service's enforcement mission, Project Jobs was clearly a success. Apprehension goals were exceeded, attractive jobs were opened, and public sentiment strongly favored the effort. Despite the high-profile nature of the project, there were few allegations of improper conduct by INS and its officers. Litigation arising from the week's activities has been confined to procedural matters which are limited in scope. Liaison with various U.S. Attorney's caused the issuance of 60 search warrants, nearly all of which we acquired under the relatively new guidelines on administrative warrants outlined in *Blackie's House of Beef* v. *Castillo*, D.C. Civil Action Nos. 78-0787 and 78-2338, July 22, 1981.

While there are solid indications that many of the vacated jobs were filled by citizens and lawful residents, a thorough study is being considered to determine if this observation is supportable by other data. Meanwhile, Project Jobs demonstrated to all concerned parties the efficacy of tieing the employment referral process to area control operations, and will form the basis for future enforcement policy. □

## The Interdiction Program[1]

By Rudolph W. Giuliani
*Associate Attorney General*

The interdiction program which was initiated by the Coast Guard last October 10 at the request of the President is one of many parts of the President's program [to curb the flow of illegal migrants] which is geared to reform and increase the effectiveness of our country's immigration laws. The President's initiatives are interrelated and designed to work together as a comprehensive whole. They will effect comprehensive and sorely needed changes in our immigration policy and laws.

The need for such change is demonstrated by the dramatic and unanticipated increases in migration and pressure to migrate we have experienced in recent years. Historically, persons desiring to emigrate to the United States, including refugees, have been screened and processed overseas. Thus, the overwhelming majority of individuals who arrived on our shores had been adjudged eligible for admission prior to arrival. Applications for asylum by persons already in the United States were, in the past, relatively few in number and generally clear-cut in nature.

This picture has changed dramatically. Beginning with the Haitian influx in the late 1970's and the outpouring of Cubans from Mariel harbor in 1980, there are now as many as 160,000 persons in the United States whose arrival has been unauthorized and who seek permanent asylum in this country as persons fleeing political persecution. Our policies and procedures, which have been generous and deliberate, have proven inadequate to deal with these overwhelming numbers.

The approximately 800,000 persons who were admitted to the United States in 1980, the latest year for which complete figures are available, represent the greatest influx since 1914. The total number of immigrants and refugees legally and illegally entering the United States in that year represents a greater number of immigrants than ever entered the country in any year, even during the great unrestricted tides of immigration between 1880 and 1921. Surely, it is not necessary to emphasize the vast difference in the economy of this country in the early part of this century as compared to today.

The American people recognize and respect their heritage as a land of immigrants, as a beacon of hope in a vastly troubled world, and have no desire to see that tradition or hope destroyed. Nevertheless, they rightfully expect their government to control the way in which people enter this country. I believe that the proposals announced by the Administration will do much to fulfill that expectation.

[1] This article is excerpted from testimony presented by Mr. Giuliani on February 8, 1982, before the Committee on Merchant Marine and Fisheries, Subcommittee on Coast Guard and Navigation, House of Representatives.

The Coast Guard vessel Chase stands in the background while a boarding party approaches the S/V Exorde, the first Haitian vessel intercepted under the interdiction program.

The breadth and depth of the proposals are impressive. They are intended to deal with the problem of illegal aliens by bringing the productive members of this underground population out into the open; by encouraging the others who do not wish to abide by our laws and contributs to our society to leave; and by deterring further illegal entries and channelling more would-be entrants into legal paths of immigration.

**Plight of the Haitians**

Among the illegal immigrant groups which should be considered in such a comprehensive plan are those who have been arriving by sea. The plight of the Haitians is particularly tragic. In their homeland they face poverty and hunger.

According to the State Department, Haiti is the poorest country in the Western Hemisphere with an annual per capita income of $300.00. Agricultural productivity is low and declining, and rural Haitians (80% of the population) suffer from high unemployment, lack of social services, illiteracy and grinding poverty. The State Department has advised us that the vast majority of Haitians who leave the country do so in search of improved economic conditions elsewhere. The United States, understandably, represents for many of these people a concrete hope for a better life. Last year's Mariel boatlift, coupled with an overall indecisive United States government response to illegal immigration by sea, greatly encouraged this illegal flow. While only 2,522 Haitians are known to have reached Florida illegally in 1979, that number jumped to 15,093 in 1980.

**"The plight of the Haitians is particularly tragic."**

**Open Immigration?**

While our legal immigration program is the world's most generous and provides a partial answer to this problem, it allows only a small percentage of would-be immigrants to enter the United States.

The United States unfortunately cannot throw open its doors to all the poor of Haiti, any more than it can open its doors to all the poor of the world who would seek a better life. America simply cannot take all those who would choose to come here. That has been so since 1921 when we first established numerical limitations for foreign countries. With the state of our economy and our own responsibilities to the unemployed in the United States, these ceilings are as important, probably more important than ever before.

The lines presently drawn by our laws are rational and workable. Like the laws which govern the admission of immigrants, there are clear laws governing the admission of refugees and asylees.

Those who can show that they fled their country due to a well-founded fear of persecution based on political beliefs, race, religion, nationality, or membership in a particular social group or who fear such persecution if they return, may qualify for refugee status for entry into the United States or for asylee status in order to stay in the United States. The door to bona fide refugees must and will remain open and every asylum application will be reviewed carefully on its own individual merits. But those who seek only economic betterment do not qualify as refugees or asylees. They are admissible only to the extent that they qualify within existing ceilings and eligibility requirements.

**"America simply cannot take all those who would choose to come here."**

This is not some new rule applied only to this group of people. This is the basic rationale that has governed immigration since 1921, and has applied to all groups from many different nations since then.

**Discourage Illegal Migration**

While many of those who now reach our shores from Haiti do not qualify under these standards, they continue to come because they have not been sufficiently discouraged from doing so. The motivation to attempt to reach the United States from Haiti is exceedingly strong. Only a decisive United States policy, which sends clear signals back to Haiti, will overcome it. Such a policy has been sorely lacking.

Our lack of consistent enforcement of our immigration laws against those who would come here illegally leaves a wide gap which the unscrupulous and greedy have quickly filled. Profiteers and unscrupulous smugglers continue to build thriving illicit businesses which traffic in human beings.

They recruit Haitians for trips to the United States knowing that our laws against such efforts are not sufficiently strong. There are those in this country who are also profiting from exploitation of these immigrants after they arrive here illegally.

**Perils Faced**

By failing to sufficiently discourage this traffic we disserve not only the communities in South Florida and elsewhere which must absorb the impact, but also the Haitian immigrants themselves. The trip they make across 500 miles of open sea to the United States is an extremely perilous one. While a motorized vessel can make this trip in three days, it takes the typical Haitian sailing vessel from two to six weeks. These vessels are often unseaworthy and dangerously overloaded. They carry inadequate supplies of water and food and inadequate means of refrigeration. In addition, they are often manned by people who lack required sailing and navigation skills, and worse, there is evidence to suggest that some who man these vessels may commit atrocities on those they transport.

**"We must regain control of the way people enter this country and cease to reward and encourage those who would illegally enter."**

While no figures are available, we must assume that many of these vessels are lost at sea with all aboard. The tragedy of the 33 Haitians who drowned off the coast of Florida last fall brought home to the American public the realization of how dangerous a trip this is. These tragic deaths have shocked and saddened our country.

Our response must be two-fold: firm enforcement of our laws as well as decent and humane treatement for these people when they are here. We must not lose sight of the fact that all those who attempt this sea journey are gambling with their lives, and those who encourage them to do so for good or bad motives, are needlessly endangering human life. The 33 recent deaths serve to remind us of these perils, but the true extent of the tragedy may never be known.

**Interdiction**

To deter the continuing unauthorized traffic to our shores, the President, on September 29, 1981, ordered implementation of an interdiction program under existing authority. The ample legal basis for this program was described by the Justice Department in its testimony before this Subcommittee on September 17, 1981. A 90-day trial program began on October 10, 1981, pursuant to a bilateral agreement between the governments of the United States and Haiti which was signed on September 23, 1981.

Coast Guard operations under the program have centered on use of a USCG High Endurance Cutter positioned off the Northwest Coast of Haiti. When suspicious vessels are located, a Coast Guard boarding party is dispatched to establish the registry, condition and destination of the vessel.

Specially trained INS personnel—two officers and two Creole interpreters—are responsible for determining the status of people on board interdicted vessels and whether there is any basis for a claim of refugee status. Immigration officers ask each adult and unaccompanied minor several questions designed to elicit information upon which claim to refugee status might be based. If there is an indication of a colorable claim of refugee status, the individual is to be brought to the United States where a formal application for asylum would be filed.

These procedures fully meet our international treaty obligation not to return any person with a well-founded fear of persecution. In addition, we have received, through the State Department, unqualified assurances from the Government of Haiti that returned migrants will not be prosecuted for their departure or otherwise harassed. The State Department has instituted a monitoring procedure to follow-up on returnees.

**Vessels Interdicted**

The fears of those who believed this program would be dangerous have been proven groundless. It has been handled by the Coast Guard in a highly professional, competent, and sensitive manner. More than 70 sus-

The Exorde was found to have 56 illegal Haitian migrants on board. Although at sea five days, they had traveled only 120 miles from the coast of Haiti. Shortly after the Haitians were safely transferred to the Coast Guard cutter, their boat capsized.

pect vessels* have been boarded and checked.

One vessel, the Exorde, was intercepted on October 25, 1981 and found to have 56 illegal Haitian migrants on board who were travelling to the United States. Although they had been at sea five days, they had travelled only 120 miles from the coast of Haiti and their water supply was already running low. With almost 400 miles of the journey lying ahead at the time of the interception, the Haitian vessel was leaking and the weather was worsening. Shortly after the Haitians were safely transferred to the Coast Guard cutter, their boat capsized. The Coast Guard has informed us that those on board were relieved that they had been discovered and that the vessel would not have made it through the night.

Under established procedures, all those from the Haitian vessel were interviewed by experienced INS officers and, after it was determined that no person on board had a fear of persecution upon return, they were returned to Haiti. Initial follow-up by the State Department regarding 16 of those from the Exorde indicates that they have not been mistreated in any way. The action by the Coast Guard in this case, we believe, directly averted a tragedy at sea.

On January 10, 1982, a 34-foot sailboat with 106 Haitians on board was intercepted by the Coast Guard off the Northwest tip of Haiti. Those on the vessel explained that they had departed Haiti for Miami on August 18, 1981, had landed at Cuba three times, were frustrated by the weather and were on their way back to Haiti. All were interviewed by INS officers and no evidence of an asylum claim was found. Rather, the migrants expressed the desire to return to Haiti. Their badly overloaded boat developed leaks and, for safety, they were transferred to the Coast Guard cutter and transported to Haiti.

In addition, as of January 8, 1982, the Coast Guard had intercepted five smuggling vessels containing over 30 tons of various drugs. Thirty alien crew members were arrested for drug smuggling and are to be tried in United States courts. After sentences are served, these persons will be deported.

United States Department of Justice
Immigration & Naturalization Service
Washington, D.C.

KNOWN EXCLUDABLE HAITIAN ARRIVALS, MIAMI, FLORIDA
CALENDAR YEARS 1979-1982

| MONTH | 1979 | 1980 | 1981 | 1982 |
|---|---|---|---|---|
| January | 6 | 677 | 788 | 41 |
| February | 10 | 306 | 382 | 12 |
| March | 38 | 1,401 | 530 | 14 |
| April | 44 | 1,174 | 475 | 20 |
| May | 75 | 1,396 | 803 | 2 |
| June | 171 | 1,456 | 1,807 | 6 |
| July | 219 | 1,462 | 1,717 | |
| August | 223 | 1,731 | 978 | |
| September | 185 | 1,874 | 629 | |
| October | 637 | 2,290 | 306 | |
| November | 269 | 1,021 | 47 | |
| December | 590 | 643 | 48 | |
| Totals | 2,322 | 15,093 | 8,069 | |

### Arrivals Decrease

The results of the interdiction efforts have been dramatic. We have seen, in the few months of the program's operation, a significant decrease in the number of Haitians headed to the United States illegally. While 15,093 Haitians are known to have arrived illegally in 1980, 8,069 arrived in 1981. Before the start of interdiction on October 10, 1981, large numbers were arriving illegally each month. In November 1981, the first full month of the interdiction program, only 47 undocumented aliens are known to have reached Florida. The accompanying table reflects the decrease in Haitian arrivals since initiation of the program.

### Continuation of Program

The interdiction program is an important part of the President's integrated immigration plan and an important mission for the Coast Guard. The Department of Justice believes that the 90-day trial project has been an unqualified success. In conjunction with the detention policy, it has deterred many from seeking to enter this country illegally. It has resulted in the rescue of one boatload of migrants from extremely perilous circumstances and undoubtedly will result in saving more lives by discouraging illegal traffic at sea.

The Department of Justice, therefore, believes that the project should be continued at least through the end of the current fiscal year. The Attorney General has made this known to the Secretary of Transportation and Secretary Lewis has authorized the Coast Guard to continue this activity. Discontinuance at this time is likely to result in a renewed influx of undocumented Haitians by sea, while continuance of the project will permit us to test its effectiveness during the May to September period in which, historically, most boat movements occur.

### Regain Control of Borders

We believe any additional expenditure is justified by the program's success and offset by the savings resulting from the decreased illegal flow. It is a cost effective program that has proven its worth during its brief 90-day trial. In the past, when our policies have been weak and fluctuating

*Since the end of June 1982, more than 100 vessels have been boarded and checked.

the numbers of persons entering our country illegally have substantially increased. Now, as we embark upon a comprehensive effort to regain control of our borders, is not the time to show a weakening resolve. Had some of these decisions been made and enforced without vacillation in the past, Miami may well have been spared the difficulties, including soaring crime rates, that it faces today. If Congress will act quickly to pass the needed laws proposed, we may, finally, be able to start solving the problems that plague our immigration system.

We must teach those of the world who seek to cross our borders illegally that we have laws and regular procedures which must be followed. Over 1,100,000 people are now waiting in their countries of origin for immigrant visas to the United States. The gate crashers must not, in fairness to the people of our own country and those in other lands who seek to come here lawfully, be allowed to succeed in thwarting our laws.

**"We must not lose sight of the fact that all those who attempt this sea journey are gambling with their lives..."**

The President's immigration package represents neither avoidance of nor overreaction to the problem. A moritorium on all refugee admissions, as proposed by some, is neither humane nor in keeping with our national traditions. It would be an extreme overreaction which could cause serious damage to the American tradition.

This Administration's efforts are guided by the twin goals of continuing the tradition of America as a land of opportunity for all but within equitable ceilings, eligibility standards and principles for determining the status of those who claim to be refugees under United States law. We must regain control of the way people enter this country and cease to reward and encourage those who would illegally enter. To preserve the generous spirit of our country and its heritage as a land of immigrants, we must stop the uncontrolled flow of the uninvited. I believe the program the President has developed, of which interdiction is but one part, is fair and realistic and can accomplish these goals. □

## Alien Smuggling and the Vehicle Seizure Law

By Humberto E. Moreno
*Director, Anti-Smuggling Enforcement Division*
*Central Office*

Clearly demonstrating the inhumane treatment by smugglers, Del Rio Border Patrol Agents found 15 aliens concealed in a 6' by 4' compartment in this horse trailer. There was no ventilation or sanitary facilities, and adding to the already hazardous conditions was a propane catalytic heater which was being used for warmth. The means of entry to the compartment was through a 3' X 21' trapdoor located in the floor of the trailer.

The smuggling of human beings over the U.S. border is becoming an increasingly dangerous business. Illegal aliens trying to cross the borders are faced with escalating violence at the hands of professional smugglers.

At one time the major danger to aliens smuggled into this country came from heat, exhaustion, and frostbite. Now, we are seeing men, women, and children who have been maced, beaten, chained to trees, and stacked like boxes in unventilated semi-trailer trucks. Some have even disappeared. Friends and families may find their clothing and even their money, but not the individuals themselves. In addition, instances of rape also have been reported.

Recently, a new and disturbing kind of force has surfaced; the taking of hostages. A grandmother and another relative were held for $700 ransom and threatened with bodily harm. INS investigators at the Stockton, Calfironia Anti-Smuggling Unit traced the phone calls, conducted a

The INS storage lot in California reflects the variety of vehicles seized by INS officers in smuggling attempts, including campers, pick-up trucks, station wagons and sedans.

surveillance, and videotaped a prearranged payoff of the sum requested. Three smugglers were arrested and the hostages released without injury.

INS officials see at least three reasons for the increasing violence. The main reason is the rising rate of illegal border crossers. Smugglers are handling larger groups and, to keep the illegal aliens under control, frequently resort to physical abuse. In addition, INS investigators report that those coming across the border now tend to be more "street wise", and more likely to resist the commands of their smugglers.

### Crackdown

The smugglers themselves are becoming more wary. They fear being caught in the INS anti-smuggling crackdown. The crackdown is focused on the large, well-organized smuggling rings that bring in thousands of illegal aliens each year. In predawn raids across the country in late April 1981, INS Anti-Smuggling Agents arrested 12 alleged members of a multi-million-dollar ring and charged them with bringing in as many as 200 illegal entrants per week for the past five years.

The undocumented aliens, mostly Mexicans and Guatemalans, were recruited in Allende, Guanajuato, Mexico. Each paid smugglers from $400 to $800 to be driven to cities all over the United States. These arrests, the result of months of investigation, should help discourage other large-scale smuggling operations. It should also put some fear into the "Ma and Pa" type of weekend smuggler.

### Charges Other Than Transporting

Another part of the crackdown involves penalties. INS is asking its officers to look beyond the routine charges of transporting illegal aliens. Charges such as conspiracy, perjury, extortion, tampering with witnesses, and obstruction of justice, as well as intimidation, are being added whenever applicable, and stiffer sentences should result.

The Peonage Statute, formerly the Anti-Slavery Law, is also a significant tool currently being employed. That statute can be applied to cases involving the holding of persons for involuntary servitude, a tactic increasingly used by smugglers and some employers to collect fees.

### Vehicle Seizure Law

After years of diligent effort by INS, the 95th Congress finally granted Service personnel the authority to seize conveyances unlawfully being used to transport and smuggle illegal aliens. On May 19, 1979, regulations were enacted putting into force Public Law 95-582, which authorizes the seizure and forfeiture of conveyances used in violation of 8 U.S.C. 1324 (transporting illegal aliens). The law gives Service personnel responsible for enforcement one more effective mechanism for curbing the smuggling of illegal aliens. Since that date, 8,600 conveyances, which include automobiles, trucks, campers, horse trailers, tractor trailer cabs, and boats, have been seized.

The Western Region, which handles the largest portion of the illegal

United States Department of Justice
Immigration and Naturalization Service
Washington, D.C.

**SUMMARY OF ANTI-SMUGGLING AND VEHICLE SEIZURE ACTIVITIES 1979 THROUGH APRIL 1982.**

| | 1979 | 1980 | 1981 | 1982 |
|---|---|---|---|---|
| Smugglers Apprehended | 18,574 | 19,238 | 13,939 | 7,955 |
| Illegal Aliens Apprehended | 211,780 | 136,547 | 109,389 | 45,482 |
| Authorized Prosecutions | 2,208 | 3,021 | 7,005 | 3,361 |
| Felony Convictions | 1,383 | 1,139 | 1,205 | N/A |
| Vehicle Seizures | 191 | 2,969 | 2,831 | 3,0[illegible] |
| Appraised Value | * | $11,035,004** | 5,701,660 | $7,089,286 |

* Not computed at that time
** Appraised value is larger than in subsequent years due to number of boats seized during Cuban Flotilla.

traffic entering the United States, has seized more than 80 percent of the nation-wide total. The seizure program is a deterrent strategy and places a financial burden on the smuggler. To date, the appraised value of conveyances seized is more than $24.8 million.

The smugglers are finding it difficult to adjust to the new policy. In fact, a Phoenix, Arizona smuggler, who had been informed that his Plymouth Duster had been seized, refused to believe that it could not be recovered. He returned to the Federal parking lot where the vehicle was being held, and stole his own car.

Housewives, relatives, and first-time transporters of illegal aliens are having to explain why they lost their cars and trucks because they simply "went to the border to pick up their maid or relatives." In addition, last year's "Freedom Flotilla" from Cuba resulted in the seizure of 155 vessels. Final disposition of these boats is pending.

### Storage Problems

The success of this program also has created some problems relating to storage and disposal. Since more vehicles were seized than anticipated, it was difficult to find places to store them and ways to sell them through the official government system. In point of fact, the Immigration Service is seizing about three times as many vehicles as any other Federal agency with similar laws.

Congressman Romano L. Mazzoli, Chairman of the House Subcommittee on Immigration and Refugee Policy, and members of his Committee; senior officers of the U.S. Navy Imperial Beach Naval Air Facility in California; and regional personnel of the General Services Administration (GSA), California, worked with INS personnel to resolve the storage and disposal problems that confronted the Western Region. An agreement for storage facilities was reached with the Navy, and GSA eased their sales procedures by allowing spot rather than sealed bids. This has resulted in a more rapid turnover of the seized vehicles. The Service owes a debt of gratitude to those who gave their time and effort to help resolve these administrative difficulties.

### Law Amended

Under the so-called efficiency legislation passed by Congress on December 20, 1981, entitled "The Immigration and Nationality Act Amendments of 1981" (P.L. 97-116, 95 Stat. 1611), the seizure and forfeiture law was amended to broaden INS authority and to bring it into conformity with those of other enforcement agencies. The provisions of that Act revised the existing law by:

1) authorizing INS to seize vehicles without having to establish whether the owner was involved in the illegal activity, with provisions for remission or mitigation of forfeiture available for innocent owners. Previously, seized vehicles were returned to their owners unless it was definitely established that the owner was privy to the illegal act;
2) eliminating the requirement

The ingenious methods of smugglers can never be underestimated. Here the dashboard of an automobile was hinged so it could be lifted and a small person or contraband could be concealed.

This half-ton flatbed pick-up truck, with steel tank mounted on the back, was stopped by San Clemente, California, Border Patrol Agents. Ten aliens were found concealed in the tank. The tank was well constructed with double walls. The space between the walls was filled with liquid so that in checking the filler pipe it would give the impression the tank was filled with liquid. The depth of the liquid in the filler pipe was the same depth in the tank walls.

Driver of the truck became concerned about the aliens concealed inside since he had shut off the two-fan cooling system inside the tank when stopped, to prevent the agents from hearing the blower noise. He relented and revealed to agents a trapdoor through the truck bed into the bottom of the tank.

that the government bear administrative and incidental expenses where an innocent owner is involved, even though there was a reasonable belief or probable cause for the seizure. Previously, INS paid the costs incurred if the owner of the seized vehicle was innocent, even if the seizing officer could not have known the state of the owner's involvement; and

3) eliminating the requirement that the INS satisfy any valid lien or other third party interest in the vehicle without expense to the interest holder. Previously, all lienholders had to be satisfied up to the full market value of the vehicle, and the administrative handling costs could not be deducted from the proceeds until lienholders were satisfied in full.

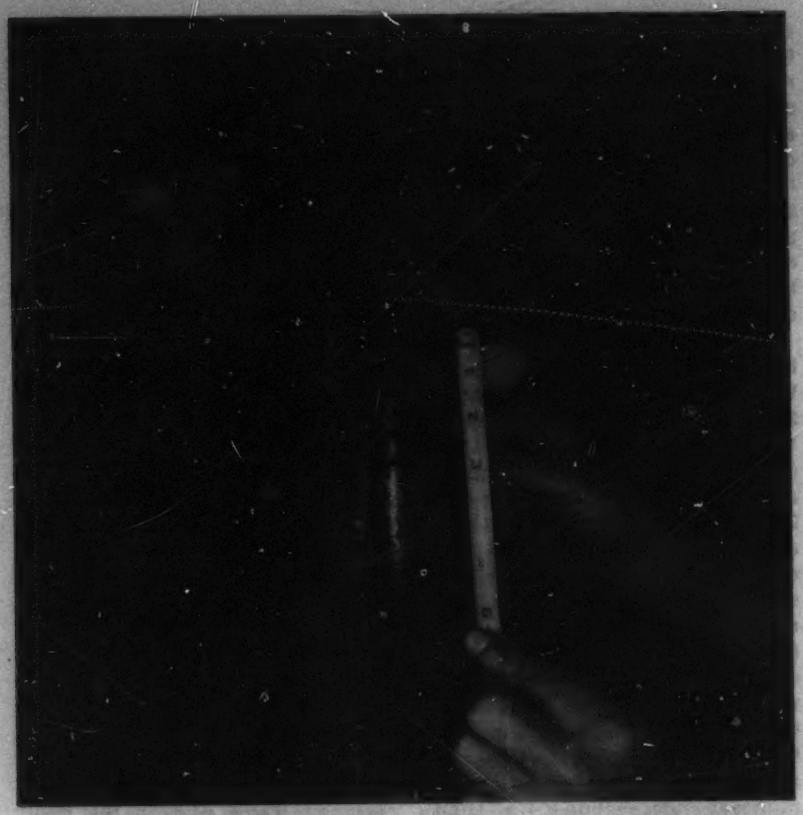
The principal objective of the vehicle seizure law is to deter alien smuggling. This aspect of the Service's enforcement effort is directed at the smuggler. It is not designed to supply the Service with needed vehicles. However, of the approximately 8,600 vehicles seized to date, 80 are presently being used by INS.

Although there are some problems that need to be worked out insofar as the new policy is concerned, the vehicle seizure program is working, and working well. Those smugglers who consider the odds of being caught and receiving probation or reduced sentences, now must contend as well with the possible seizure of their property.

**International Cooperation**

Another smuggling deterrent is the increased involvement of the international enforcement community. The Governments of Canada, Mexico, and some South American nations have committed federal resources to investigating and prosecuting alien smugglers. One excellent example of this cooperative effort occurred on the weekend of July 4, 1980, when a group of Salvadorans attempted to enter the U.S. through the Sonora Desert near Ajo, Arizona. This desperate effort ended in the deaths of 13 of the Salvadorans. Within hours, Salvadoran and Mexican authorities assisted U.S. agents in apprehending those responsible for the tragedy.

In addition, state and local authorities all over the Nation are now pro-



The filler pipe which led from the outside of the tank into the concealed space had slots cut in it above the water level to provide additional air to the aliens.

viding the INS with information on suspected smuggling. The public is also becoming more aware of such things as neighborhood drop-houses in which smugglers conceal groups of people awaiting the conclusion of their clandestine journey. First-hand information from the public is extremely valuable.

In the past, particularly in border areas, the professional smuggler was once regarded as something of a Robin Hood. He was the one who helped those with a desire to make a better life for themselves to realize their dreams. Now, increasingly, the public is becoming aware that the smuggler is in the business for strictly commercial reasons. And, what is worse, he is becoming more callous and vicious. □

## Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:

47 FR 18122, April 28, 1982, Sec. 103.1(e) correcting the legal citation and text in final regulations published November 19, 1981 (46 FR 56775), implementing the revised delegations of authority of the powers and duties of service officers as it relates to the General Counsel.

47 FR 19315, May 5, 1982, Sec. 274, interim rule.

47 FR 19671, May 7, 1982, Sec. 100.4(c) (2).

47 FR 20110, May 11, 1982, Sec. 238.4

47 FR 25002, June 9, 1982, Sec. 100.4(b) 14 & 20.

47 FR 27549, June 25, 1982, Sec. 100.4(d).

47 FR 28608, July 1, 1982, Sec. 238.4

47 FR 30044, July 9, 1982, Secs. 212.5 & 235.3, interim rule. ■

## ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50 per year, $12 extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.)**

**Number 2896-Matter of Sauceda. In Visa Petition Proceedings, A-20724489. Decided by BIA, Feb. 4, 1982.**

(1) At the time of the petitioner's purported adoption of the beneficiary, Article 400 of the Civil Code of Tamaulipas, Mexico, provided for adoption only by persons "who have no descendants."

(2) The United States citizen petitioner, who had a living natural child

at the time of the beneficiary's adoption in Tamaulipas, Mexico, was in compliance with the Civil Code of that state, and, hence, did not establish that beneficiary qualified as a child of petitioner under section 101(b)(1)(E) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(E). *Matter of Espinosa*, 16 I&N Dec. 199 (BIA 1977), and *Milia v. District Director*, 494 F.Supp. 998 (D. Utah 1980), distinguished.

**Number 2897-Matter of Hall. In Deportation Proceedings, A-22103583. Decided by BIA, Feb. 4, 1982.**

(1) The respondent, who engages in fund-raising activities as part of his missionary work for the Unification Church, is employed within the contemplation of section 245(c)(2) of the Immigration and Nationality Act, 8 U.S.C. 1255(c)(2), and, therefore, his employment without the permission of the Immigration and Naturalization Service bars him from adjusting his status in the United States to that of a lawful permanent resident.

(2) Where the respondent receives full support in return for his missionary duties, he is not an unpaid volunteer in the service of the Church even though he receives no fixed salary or remuneration in an amount proportional to his success in his work.

(3) In the absence of a clear expression of legislative intent, the Board will not conclude that detriment to the American labor force was Congress' sole or even primary concern in enacting section 245(c)(2) of the Act; however, where the respondent's activities as a fundraiser could be performed by persons or business enterprises outside the Church and involve the sale of goods, an entrepreneurial undertaking which places the Church in competition with other sellers of such goods, it may not be said that those activities are without adverse impact on the United States labor market.

(4) In considering the applicability of section 245(c)(2) of the Act, the Government does not improperly dictate to the Unification Church the permissible scope of its missionaries' duties by isolating the respondent's fund-raising activities from his purely ministerial duties: determining the status or duties of an individual within a religious organization is a distinct question from determining whether that individual qualifies for status or benefits under our immigration laws and authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States.

**Number 2898-Matter of Richard. In Visa Petition, Proceedings, A-22677182. Decided by BIA, Feb. 9, 1982.**

(1) Under the Civil Code of Haiti, as amended by the 1959 Presidential Decree, children born out of wedlock after January 27, 1959, and acknowledged by their natural father have the same rights and obligations as legitimate children.

(2) Where the beneficiary, a native and resident of Haiti, was born out of wedlock in 1969 and acknowledged by the natural father in 1977, prior to his eighteenth birthday, he is deemed a legitimate child for immigration purposes under section 101(b)(1)(C). *Matter of Remy*, 14 I&N Dec. 183 (BIA 1972) overruled.

**Number 2899-Matter of Fakeiata. In Visa Petition Proceedings, A-22464956. Decided by BIA, March 10, 1982.**

(1) In order to prove that a customary adoption is valid for immigration purposes, the petitioner must establish that the adoption creates a legal status or relationship which is recognized by the government of the place where it occurred as carrying with it substantial legal rights and obligations.

(2) Notwithstanding that the Crown Solicitor of Tonga is of the opinion that customary adoptions in that country create a new parent and child relationship, the facts indicate that this relationship is not exclusive of the natural parents, does not give the adopted child rights and duties comparable to a natural legitimate child, and does not have any legal effect under Tongan law.

(3) Where the petitioner has failed to prove that customary adoptions in Tonga create a parent and child relationship which establishes legal rights and obligations that are sanctioned by Tongan law, such adoptions are not recognized as valid under United States immigration laws. *Matter of Paleloi*, 16 I&N Dec. 716 (BIA 1979) reaffirmed.

(4) Although a Tongan customary adoption was recognized as valid for immigration purposes in *Milia v. District Director of Denver, Colorado*, 494 F.Supp. 998 (D. Utah 1980), that decision is not binding in cases, as the instant one, arising outside of the jurisdiction of the District of Utah.

**Number 2900-Matter of Lin. In Exclusion Proceedings, A24396728. Decided by BIA May 6, 1982**

(1) An alien who absconds from an Immigration and Naturalization Service detention facility while awaiting exclusion proceedings does not make an entry into the United States as defined in section 101(a)(13) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(13), and, therefore, was properly placed in exclusion proceedings. *Matter of A-*, 9 I&N Dec. 356 (BIA 1961); and *Matter of A-T-*, 3 I&N Dec. 178 (BIA 1948), distinguished.

(2) An alien who escapes from Service detention does not acquire the same status as an alien who evades Service inspection by entering the United States surreptitiously and, hence, may not be accorded the procedural benefits of deportation proceedings.

**Number 2901-Matter of Drigo. In Visa Petition Proceedings, A22631584. Decided by BIA, May 6, 1982.**

(1) A visa petition filed on behalf of a beneficiary whose adoption occurred after his fourteenth birthday, but before his sixteenth birthday, was properly denied by the District Director of the Immigration and Naturalization Service because the beneficiary was not eligible for preference status as an adopted child under section 101(b)(1)(E) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(E), at the time the application was filed.

(2) Notwithstanding a recent amendment to section 101(b)(1)(E) which changes the age limitation of an adopted child from fourteen to sixteen years and the fact that the adoption was timely executed under the amended language of the statute, the beneficiary does not qualify for immigration benefits under section 203(a)(2) of the Act, 8 U.S.C. 1153(a)(2), because a visa petition approval would result in giving a priority date to which the beneficiary was not entitled at the time of the filing of the visa petition.

**Number 2902-Matter of Martin. In Deportation Proceedings, A21396402. Decided by BIA, June 9, 1982.**

(1) Robbery is a crime involving moral turpitude.

(2) Where the alien respondent was convicted of aggravated robbery and received a sentence to confinement totaling 12 years, but thereafter that sentence was voided and the respondent resentenced to 3 months confinement and 5 years of probation pursuant to the provisions of Colorado Rule of Criminal Procedure 35(a), her sentence does not constitute a "sentence to confinement for a year or more" under section 241(a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(4); therefore, she is not deportable under that section of the Act.

**Number 2903-Matter of M/V "Coral Springs". In Fine Proceedings, MIA-10/12.1043. Decided by BIA, June 2, 1982.**

(1) The concept of "strict liability" does not apply until after it has been established that a carrier violated section 273 of the Immigration and Nationality Act, 8 U.S.C. 1323, by bringing undocumented aliens to the United States; however, once that has been established, the carrier's liability for fines is absolute.

(2) Section 273 does not make it unlawful to own a vessel that is used to bring undocumented aliens to the United States or impose a duty upon the owners of vessels to prevent their vessels from being used in that manner.

(3) Where a vessel has been used to bring undocumented aliens to the United States in violation of section 273 of the Act, it will be presumed that the owner of the vessel participated in the bringing of the aliens by permitting his vessel to be used to transport passengers to the United States, in the absence of evidence to the contrary.

(4) The owner has rebutted the presumption that he participated in the bringing of aliens to the United States where he establishes that his vessel was a commercial fishing vessel, that he employed the captain to use the vessel for fishing and not for any other purpose, that he did not know or have any reason to anticipate that the captain would use the vessel to transport passengers to the United States, and that when he learned that the captain intended to use the vessel for that purpose the owner did everything within his power to stop the captain from doing so.

(5) Under agency law principles, the captain's conduct in transporting alien passengers to the United States cannot be imputed to the owner where the captain, who was employed to fish, exceeded the scope of his employment by using the owner's vessel for a purpose distinct from fishing.

**Number 2904-Matter of M/V "Snail's Pace". In Fine Proceedings, MIA-10/12.884. Decided by BIA, June 2, 1982.**

(1) In proceedings under section 273 of the Immigration and Nationality Act, 8 U.S.C. 1323, the term "carrier" is not used to delineate a class of persons who are liable for violations of that section, but it is used as a matter of convenience to designate the party or parties who have been charged with liability for fines.

(2) Section 273 of the Act does not make it unlawful to own a vessel that is used to bring undocumented aliens to the United States or impose a duty upon the owners of vessels to prevent their vessels from being used in that manner.

(3) Where a vessel has been used to bring undocumented aliens to the United States in violation of section 273 of the Act, it will be presumed that the owner of the vessel participated in the bringing of the aliens by permitting his vessel to be used to transport passengers to the United States, in the absence of evidence to the contrary.

(4) The owner has rebutted the presumption that he participated in the bringing of the aliens to the United States, and hence is not liable for fines under section 273 of the Act, where he establishes that his vessel was chartered pursuant to a legitimate bareboat charter and that the charter was not entered into for the purpose of avoiding liability for fines under that section.

**Number 2905-Matter of Portales, et al. In Exclusion Proceedings, A24712281. Decided by BIA, May 14, 1982.**

(1) Cuban applicants, who were granted refugee status by Peru and were permitted to live and be employed without restriction in that country, are held to be firmly resettled in Peru prior to their arrival in the United States, and, therefore, not entitled to refugee status in this country.

(2) Notwithstanding the living and employment conditions experienced by the Cuban applicants in Peru, they are deemed firmly resettled in the absence of facts necessary to establish that the conditions of their residence were substantially and consciously restricted by the authorities of that country.

(3) In view of the fact that a grant of an applicant's request for asylum in the United States is limited to 1 year, subject to annual review, and may be terminated for several reasons including changed circumstances in the asylee's country, it is not significant as to the issue of resettlement that Peruvian refugee documents issued to the applicants were only valid for a 2-year period.

(4) An applicant whose request for asylum is granted does not enter the United States as a lawful permanent resident since that status is acquired, if at all, only after the alien has been physically present in the United States for at least 1 year from the date he was granted asylum.